

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-15-90065

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate Judge for the U.S. District Court for the _____ District of _____, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against United States Magistrate Judge _____ (the “Subject Judge”), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“JCDR”).

Background

The record shows that in January 2014 Complainant filed a complaint against two defendants, and he moved for leave to proceed in forma pauperis (IFP). In April 2014 the Subject Judge granted the motion to proceed IFP and directed the clerk to submit the complaint to the district court for review pursuant to 28 U.S.C. § 1915(e)(2)(B). After that, Complainant paid the filing fee, and the district judge entered an order noting that no frivolity review was needed in light of the payment.

The defendants then filed motions to dismiss the complaint. In October 2014 the district judge granted the motions to dismiss, finding that Complainant had failed to allege facts showing that he was entitled to relief, and a judgment was entered dismissing the case. This Court clerically dismissed Complainant’s appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant appears to allege that the Subject Judge engaged in misconduct by allowing “the clerk [to] dismiss a case before properly reviewing it.” He complains that the Subject Judge “pass[ed]” the case to the district judge because he could not pay the filing fee, and “even though [he] paid months later, the Judge became confused.” He also states that the Subject Judge “pass[ed] . . . cases back and forth more than once,” which created confusion.

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DOUGLAS J. MINCHER
CLERK

Complainant then asserts that the Subject Judge willfully and persistently failed to perform her duties, and she was “almost never” in the courtroom. Complainant alleges that “although no money [was] involved,” the Subject Judge’s actions should be “called ‘bribery.’” He also alleges that the Subject Judge exhibited “habitual intemperance” and suffered from an unspecified disability.

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s order granting the IFP motion and directing the clerk to submit the case to the district judge for review, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge engaged in misconduct or suffered from a disability.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge