

JUL 25 2016

CONFIDENTIAL

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

David J. Smith
Clerk

Judicial Complaint No. 11-16-90035

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District 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 District 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 2016 Complainant filed a lawsuit against multiple defendants, including attorney _____, raising, among other things, claims of discrimination and retaliation. The next month, various defendants, through _____, filed a motion to dismiss the complaint. Complainant moved for the entry of default against certain defendants, which the clerk entered. The Subject Judge later set aside those defaults, finding that they had been entered in error. In one order, the Subject Judge also denied Complainant’s other motions for clerk’s entry of default and for default judgment.

On March 15, 2016, Complainant filed motions for default judgment against _____ and another defendant. The next day, the Subject Judge entered an order denying those motions, finding there was no basis under Fed. R. Civ. P. 55(b) for entering default judgment against those defendants. In April 2016 Complainant filed a notice of appeal as to several of the Subject Judge’s orders pertaining to default. This Court later clerically dismissed the appeal based on Complainant’s motion for voluntary dismissal. After that, the Subject Judge entered an order granting Complainant leave to amend his complaint and denied as moot certain motions to dismiss that had been filed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in ex parte communications with _____ and that the Subject Judge “favored” _____ while being prejudiced against Complainant. He contends that the Subject Judge “has made affirmative assertions and findings without facts or rationale supporting such affirmative findings and assertions; on behalf of _____.” Complainant states that the “evidence in the Docket does not support printed facts in the docket.”

Complainant alleges that the Subject Judge has not applied the “Rules of Court” fairly and equally and has “prejudicially appl[ied]” those rules “to the financial detriment of” Complainant. He states that the “Court has ‘affirmatively applied’ woefully filed papers that do not comply” with applicable rules. Complainant also states that the “Court has begun using the ‘frowned upon’ ‘et al’ party designation in contradiction to [its] own Rules.” He asserts that the Subject Judge has vacated clerk defaults with “few, if any actual, facts.” Finally, Complainant states, “The docket evidences the complained of disability and misconducts complained of as it relates to” the Subject Judge.

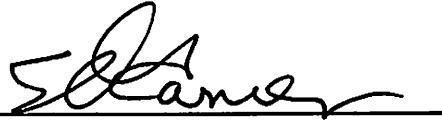
Discussion

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 findings and orders entered in the case, 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 improper ex parte communications, gave favorable treatment to a defendant, was prejudiced against Complainant, suffered from a disability, or otherwise engaged in misconduct.

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