

CONFIDENTIAL

AUG 25 2016

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

David J. Smith
Clerk

Judicial Complaint No. 11-16-90048

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 2015 Complainant filed a 28 U.S.C. § 2254
petition for writ of habeas corpus challenging certain state court convictions. After
various proceedings, in December 2015 the magistrate judge issued a report
recommending that Complainant’s § 2254 petition be denied, generally finding that he
was not entitled to relief on his claims. The next month, Complainant filed a motion for
an extension of time to file objections to the report, which the Subject Judge granted in
part and denied in part, giving Complainant until January 31, 2016 to file a response.

On February 5, 2016, Complainant filed objections (signed on January 29, 2016)
to the report and recommendation. He attached an appendix of exhibits to the objections.
On February 9, 2015, Complainant filed a motion to amend or correct his objections,
arguing that the court gave him a short of amount of time to file them, which caused him
to make significant errors. A couple of days later, the Subject Judge denied the motion to
amend. Complainant filed a motion for reconsideration, arguing he was being denied a
fair opportunity to present his claims and defenses, and the Subject Judge denied the
motion.

On April 25, 2016, the Subject Judge adopted the magistrate judge’s report and
recommendation and denied Complainant’s § 2254 petition. On the same day,
Complainant’s motion for a certificate of appealability (COA) was filed, reflecting that
he had delivered it to prison authorities for mailing on January 29, 2016. A corrected
motion for a COA and an amended motion for a COA were attached. In the motion,

Complainant requested a COA in the event the court adopted the magistrate judge's report and recommendations and denied his habeas petition. On April 26, 2016, Complainant filed "Corrected" objections (signed on April 21, 2016) to the magistrate judge's report and recommendations.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the "clerk's office via Judge's Chambers": (1) "did not docket and/or file" the appendix to his objections to the magistrate judge's report and recommendation; and (2) instructed the clerk not to file his motion for a COA that he filed with his objections and other documents. Complainant states that in May 2016 he and his wife called the clerk's office about his concerns and the clerk informed them that "she had gotten a call from the Judge's Chambers specifically instructed her not to file [his] motions for COA." Complainant notes that the clerk "eventually filed the motion for COA" and forwarded his motions for a COA to this Court.

In a footnote, Complainant asserts that the clerk "admitted she knew it was wrong, however, her defense was she received a call from the Judge's Chambers." Complainant states that he seeks to "find out with specificity" why his motions for a COA and the appendix to his objections were not filed in a timely manner, and "what rule . . . the Judge's chamber utilized to order" the clerk to withhold his motions for a COA and the appendix to his objections. Complainant also states that the Subject Judge "has demonstrated a bias[]ed opinion in [his] efforts to obtain habeas relief." He requests that this Court "quash" the Subject Judge's "order of denial," remand the case to the district court, recuse the Subject Judge, and assign the case to another 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 official actions, procedural decisions, 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 was biased against him 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**.

A handwritten signature in black ink, appearing to read "E. H. James", is written above a horizontal line.

Chief Judge