

AUG 25 2016

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint Nos. 11-16-90053, 11-16-90054, and 11-16-90061

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judges _____ and _____ of 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 _____ and United States District Judges _____ and
_____ ¹ (collectively, “the Subject Judges”), 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 June 2015 Complainant filed a lawsuit against multiple
defendants, generally alleging that federal and state employees and institutions acted
together to deprive him of his constitutional rights in connection with a hearing on his
child support obligations. Various summonses were entered on the docket. One of the
defendants filed a motion to dismiss the complaint, and Judge _____ issued an order
directing Complainant to show cause why the court should not consider the motion to
dismiss without a response from him. Complainant then filed a response and a
supplement to the response.

In September 2015 Judge _____ entered an order dismissing Complainant’s
complaint without prejudice, finding, among other things, that the complaint failed state a
claim on which relief could be granted, it failed to demonstrate that the court had subject
matter jurisdiction, and several defendants were immune from suit. The order permitted
Complainant to file an amended complaint within 14 days. Complainant filed an
amended complaint, generally reiterating his allegations that the defendants had violated
his constitutional rights. In October 2015 one defendant filed a motion to dismiss the
amended complaint.

¹ In the Complaint, Complainant refers to Judge _____ as “_____.”

In January 2016 Judge _____ issued an order dismissing the amended complaint without prejudice, finding that it “suffer[ed] from the same infirmities as the original complaint” and failed to state a claim on which relief could be granted. The order stated that Complainant could file a second amended complaint within 14 days. Later that month, Judge _____ entered an order noting that Complainant had failed to timely file a second amended complaint. That order dismissed the action without prejudice and denied all pending motions as moot.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges “stalled a criminal investigation to a case” and “refuse[d] to bring charges against” defendants “based on ethical,” racial, and gender discrimination “and other imminent lawless acts.” Complainant asks to be “allowed to bring criminal grievance charges” against the Subject Judges under various statutes. Complainant states that in May 2015 he informed Judges _____ and _____ that he would be bringing criminal charges against the defendants, and they “said that they were familiar with the case and [he] should file a complaint with their courts.” He alleges that after he filed his complaint, Judges _____ and _____ “colluded with the defendants . . . to harbor the criminal activities by intentionally stalling the procedures to investigate and prosecute, to criminally interfere, aid in fleeing and eluding, and other lawless actions while abusing and depriving [Complainant] of due process and a fair trial, and dismissing the case with prejudice.”

Complainant alleges that Judges _____ and _____: (1) returned “the summons” to him and “intentionally sent a fabricated action number on one of the summons in hand writing . . . to detour [Complainant] from filling out the forms correctly and delay the process of this complaint”; (2) “tampered and forged the forms . . . to undermine the severity of” his complaint; (3) stalled the case for the defendants to respond to the summons and “threatened to deprive” Complainant of the right to file a motion for default judgment; (4) in September 2015, “after almost a 2 month delay,” dismissed the complaint, thus depriving Complainant of due process and “aiding in criminal activities”; and (5) in January 2016, again dismissed the complaint after stalling the case and “tried to interfere with [Complainant] redressing the Government for grievance.” Complainant states that the Subject Judges “chose to use their status for improper reasons that were based on racial, ethical and gender discrimination which violates the code of conduct.” Finally, Complainant raises allegations against entities and individuals other than the Subject Judges, and he requests various types of relief. He attached various documents to his Complaint.

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 Judges’ official actions, findings, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judges acted with an illicit or improper motive, intentionally stalled the case, “colluded” with defendants, discriminated against Complainant, tampered with documents, 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