

CONFIDENTIAL

APR 20 2017

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

David J. Smith
Clerk

Judicial Complaint No. 11-17-90005

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 November 2015, as the plaintiff in a lawsuit, Complainant filed a second amended complaint against a state bar and an individual, raising claims in connection with a disciplinary proceeding before the state bar and challenging the constitutionality of certain state bar rules. The defendants filed motions to dismiss the complaint. Complainant then filed various motions and notices with the court. In January 2016 the Subject Judge entered an order noting that over the previous several months Complainant had filed papers on an almost daily basis and informing him that he should avoid filing frivolous papers. After that, Complainant filed two motions for leave to file a third amended complaint, which the Subject Judge denied.

In May 2016 the Subject Judge dismissed the second amended complaint, finding that the court lacked jurisdiction over certain claims and that a declaration as to the constitutionality of state bar rules would constitute an impermissible advisory opinion. The same day, Complainant filed a motion to file an amended complaint, and the next day, the Subject Judge denied the motion, noting that if Complainant continued to file repetitive and/or frivolous papers, the court would suspend his electronic filing privileges. Complainant filed motions for reconsideration of the orders dismissing the case and denying his motion to file an amended complaint. The Subject Judge granted in part and denied in part the motion for reconsideration of the dismissal, amending the court’s order to dismiss the claims without, instead of with, prejudice. The Subject Judge denied the other motion for reconsideration.

In November 2016 Complainant filed a motion to set aside all orders and judgments entered in the case, alleging that the Subject Judge and other judges retained their membership with the state bar during the case, which caused them to be biased against him. He also argued that the Subject Judge should have disqualified herself due to her husband's relationship with a state bar and state supreme court. On the same day, Complainant filed a motion to recuse the Subject Judge for the same reasons stated in his motion to set aside. The next day, the Subject Judge denied the motion to set aside and motion to recuse as frivolous. In December 2016 Complainant filed a motion to set aside all of the Subject Judge's orders and judgments and for her recusal, alleging that she had a financial interest in a party in the case. A couple of days later, the Subject Judge denied the motion as repetitive and frivolous, and she instructed the clerk to suspend Complainant's electronic filing privileges in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he is complaining that the Subject Judge failed to recuse herself from the case. He notes that in May 2016 the Subject Judge stated that if he continued to file repetitive and/or frivolous papers, the court would suspend his electronic filing privileges. He also notes that he filed a motion to set aside and for the Subject Judge's recusal "based on her financial interest in the State of _____," and that she denied the motion as repetitive and frivolous and instructed the clerk to suspend his electronic filing privileges.

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.* (emphasis added). 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.

All of Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the case, and the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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. Hanna", written over a horizontal line.

Chief Judge