

APR 20 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90006

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 Complainant, as counsel for a plaintiff, filed in state court a lawsuit against a company, and the defendant removed the case to federal court in March 2011. In June 2011 the plaintiff filed a second amended complaint raising various claims and naming two additional defendants. One defendant filed a motion to dismiss or, in the alternative, for summary judgment, and the other two defendants filed a motion to dismiss based on, among other things, insufficient service.

In November 2011 the Subject Judge entered an order granting the defendant’s motion for summary judgment, finding that the defendant was not a proper party. The Subject Judge also entered an order granting the other two defendants’ motion to dismiss, finding they were not properly served. Several days later, the plaintiff filed a motion for extension of time and for leave to serve the two defendants. In December 2011 the Subject Judge denied the motion, finding that the plaintiff did not show good cause in support of the request. Later that month, all of the defendants filed a motion for sanctions against the plaintiff and Complainant, generally arguing that they pursued the matter against the defendants frivolously and vexatiously.

In August 2012 a magistrate judge issued a report recommending that the motion for sanctions be denied, generally finding that sanctions were not warranted. The defendants filed objections to the report and recommendation, arguing that the court should reject the report’s finding and sanction Complainant. In September 2012 the

Subject Judge adopted the report in part and denied the motion for sanctions. The order stated that, although the standards for imposition of sanctions were not met, Complainant's behavior "border[ed] on incompetent" and did not meet the "level of professionalism expected by the Court." The order referred Complainant to a committee "for mentoring, supervision, and monitoring."

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 when the defendants filed objections to the magistrate judge's report and recommendation. Complainant states that the magistrate judge "effectively had disapproved of [the Subject Judge's] disap[p]roval of Complainant's pursuit against" a certain defendant and her denial of his motion for additional time to serve the other two defendants. Complainant contends that the Subject Judge "effectively became a party," which required her disqualification.

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. L. Cameron", written over a horizontal line.

Chief Judge