

APR 20 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90007

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. In November 2011 a district judge granted one defendant’s motion for summary judgment and granted the other two defendants’ motion to dismiss.

The next month, 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 September 2012 the district judge denied the motion for sanctions, but found that Complainant’s behavior “border[ed] on incompetent” and did not meet the “level of professionalism expected by the Court.” The order referred Complainant to the district’s “_____” for “mentoring, supervision, and monitoring.”

In January 2017 the Subject Judge entered an administrative order in _____, suspending Complainant from practice in the district court in light of previous discipline imposed. The order noted, among other things, that in 2012 Complainant’s conduct had been referred to the Committee, and that in June 2015 the court adopted the Committee’s report and recommendation. The order provided that Complainant could not resume the practice of law in that court until reinstated by order of the court.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he is complaining that the Subject Judge failed to recuse himself in _____. He also alleges that the Subject Judge “should have known” that the district judge in his civil case should have recused herself before she referred him to the Committee. Finally, he states that the Subject Judge “should have recused himself from judging the recommendation of discipline made by” the Committee because it “was controlled by competitors of Complainant.”

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.

Furthermore, the “Commentary on Rule 3” provides: “The phrase ‘decision or procedural ruling’ is not limited to rulings issued in deciding Article III cases or controversies.”

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions and orders, 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**.



Chief Judge