

APR 20 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90008

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 2012 Complainant, as counsel for three individuals, filed a lawsuit against a company, raising claims of employment discrimination. In May 2013 the Subject Judge entered an order in which she sanctioned Complainant by requiring him to reimburse certain attorney’s fees incurred by the defendant, as a result of his refusal to comply with the defendant’s discovery requests and his abuse of the judicial process.

In July 2013 Complainant filed a motion to recuse the Subject Judge, focusing on her attendance at two receptions held by the law firm representing the defendant. As exhibits to that motion, Complainant attached copies of photos showing the Subject Judge standing next to attorneys from the firm. Complainant argued that the Subject Judge’s “friendship” with the firm would cause a reasonable person to doubt her impartiality. The defendant opposed the motion, stating that along with more than a hundred other business and community leaders, the Subject Judge had attended law firm receptions welcoming the _____ and the _____. The Subject Judge denied the motion to recuse.

After various proceedings, in December 2013 Complainant filed a motion and an amended motion to recuse the Subject Judge, arguing that she had displayed bias against Complainant at a hearing and reiterating that she had a friendship with the law firm representing the defendant. The Subject Judge denied the motions to recuse. In mid-

December 2013, Complainant filed another motion to recuse the Subject Judge, asserting that she was the “close friend” of a doctor with whom she had appeared in photographs taken at two receptions held at the law firm representing the defendant. Complainant stated that the Subject Judge “must have a debt of gratitude” to the law firm for providing her with two “receptions with the honor of taking her photogra[p]hs together with her close friend . . . and posting them on the Internet.” The Subject Judge denied the motion to recuse. In January 2014 Complainant filed a motion to withdraw as attorney for the plaintiffs, and the Subject Judge granted the motion. A jury later rendered a verdict against the plaintiffs, and the Subject Judge entered a final judgment in favor of the defendant.

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 “based on her apparent friendship with a party’s local law firm and one of its lawyers on record.” He notes that in June 2014 the Subject Judge complained to the state bar about him. He attached a letter the Subject Judge wrote to “Branch Discipline Counsel” with the state bar in which she stated that: (1) Complainant’s work product in the case “fell below all standards of professionalism and competence”; (2) he filed numerous frivolous motions and engaged in “rampant discovery abuses”; and (3) “his engaging in objectionable behavior is a matter of public record.”

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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, 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 that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judge committed misconduct by failing to recuse due to her alleged “friendship” with an attorney or law firm involved in the case or otherwise engaged in misconduct. See Guide to Judiciary Policy, Vol. 2B, Ch. 2, “Committee on Codes of Conduct Advisory Opinion No. 11: Disqualification Where Long-Time Friend or Friend’s Law Firm Is Counsel” (explaining that a judge need not recuse from a case when a long-time friend is acting as counsel unless the judge’s impartiality might reasonably be questioned, such as when the friend is the godfather of one of the judge’s children and the “relationship is like that of a close relative”).

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