

AUG 18 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90015

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 December 2015 Complainant filed a *pro se* amended complaint against three individuals, generally alleging that the defendants violated his rights during certain hearings. He also filed an affidavit of indigency and a motion for a preliminary injunction. In January 2016 a magistrate judge issued a report recommending that Complainant’s: (1) affidavit of indigency, construed as a motion to proceed *in forma pauperis* (IFP), be denied; and (2) amended complaint be dismissed for failure to state a claim. The magistrate judge generally found that the amended complaint failed to comply with the jurisdictional and pleading requirements of the Federal Rules of Civil Procedure.

After that, Complainant filed a second amended complaint. In February 2016 the Subject Judge denied the motion for a preliminary injunction. On the same day, the Subject Judge entered an order adopting the magistrate judge’s report and recommendation, denying Complainant’s construed motion to proceed IFP, and dismissing his amended complaint for failure to state a claim. The next day, the Subject Judge entered an order directing the clerk to terminate all motions and close the case. Complainant then filed a notice of appeal and an affidavit of indigency. The magistrate judge issued a report recommending that the affidavit of indigency, construed as a motion to proceed IFP on appeal, be denied because the appeal was frivolous. The Subject Judge adopted the report and recommendation and denied the construed motion to proceed IFP on appeal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's order dismissing his case for failure to state a claim, and he states that he has "recently discovered new evidence on the dismissing as moot circumstance." Complainant states that he believes the Subject Judge "was asking to[o] much fact and laws with stating a claim as a lawyer would have," and showed bias against him in dismissing the case.

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 Judge's official actions, findings, 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 claims that the Subject Judge was biased against him 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