

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 18 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90016

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 February 2016 Complainant filed a lawsuit against two
doctors and a hospital, alleging that the defendants changed his surgical procedure
without his knowledge or consent and did not provide him with proper treatment. In
August 2016 the Subject Judge dismissed the claims against the hospital, and
Complainant filed an amended complaint adding the United States as a defendant. Later
that month, the United States filed a motion to dismiss, or in the alternative, for summary
judgment. After that, the Subject Judge entered an order substituting the United States as
a defendant in place of the doctors.

In January 2017 the Subject Judge granted the United States’ motion for summary
judgment because Complainant’s lawsuit was untimely. In setting out the background of
the case, the Subject Judge stated that in April 2012 Complainant received a “malleable
rod implant, which led to complications including swelling, fever, and pain.” The
Subject Judge found that the statute of limitations was not tolled. The Subject Judge
determined that, among other things, Complainant had failed to show that the United
States’ refusal to provide him with his consent form had prevented him from knowing the
critical facts necessary to file a lawsuit.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judge's statement that his malleable rod implant led to complications was "incorrect." Complainant contends that reports from doctors and nurses prove that there was no reason for the malleable rod in his body to be removed. He then asserts that the wrong surgical procedure was performed on him, that he did not consent to changes to the surgery, and that the evidence suggests that the doctors attempted to "cover it up."

Complainant states that he "totally do[es] not understand" the Subject Judge's opinion, and that "[i]n [the Subject Judge's] eyes [Complainant] must be less than a human being" and without equal rights. He asserts that it "is bias" for the Subject Judge to state that a consent form is not a vital document. Complainant then states that the Subject Judge "should be subject to prosecution due to a false statement saying there was a problem with the malleable [rod] or it was causing complication when there is no such documentation, unless it has been falsified." He asserts that the Subject Judge's false statement supported the criminal acts of doctors and nurses. He attached various documents to his Complaint. In one attachment, he reiterates his allegation that the Subject Judge made a false statement, which he contends "has to be" an act of racial bias.

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, orders, and opinion 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 intentionally

made false statements, was biased against Complainant, 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**.

A handwritten signature in black ink, appearing to read "J. Blamer", written over a horizontal line.

Chief Judge