

OCT 05 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90022

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 March 2016, jurisdiction over Complainant’s supervised release was transferred to the United States District Court for the _____ District of _____. In August 2016 United States Probation Officer _____ filed an amended petition for the court to revoke Complainant’s supervised release, alleging that she had violated the conditions of it. _____ was added to the case as Complainant’s attorney.

Later in August 2016, _____ moved to withdraw as Complainant’s attorney. Following a hearing in late August 2016, the Subject Judge entered an order granting _____ motion to withdraw and directing Complainant to either have new counsel enter an appearance within 30 days or request the appointment of new counsel. After that, another attorney was appointed to represent Complainant. That attorney later filed a motion to withdraw, and in April 2017 the Subject Judge granted the motion.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first states that _____ advised her that _____ was attempting to conspire with others to have her imprisoned, and at that time she withdrew her consent to release her medical records to individuals including _____ and _____. Complainant states that _____ produced her medical records at the August 2016 hearing, even though he should not have had them. She asserts that the Subject Judge stated that _____ gave the records to _____, stated that Complainant “shouldn’t be mad at” _____, and implied that he was a good lawyer.

Complainant states that, at the hearing, she requested time to retain an attorney, but the Subject Judge “stressed how he’d wish I would have a public defender.” She contends that a “violation has occurred” concerning her medical records and that she believes the Subject Judge “was aware of this obstruction.” She asserts that according to the Code of Conduct for United States Judges he should not preside over the case. Complainant also takes issue with the actions of her attorneys in the case. She attached documents to her Complaint.

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, 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 with which Complainant takes issue, she provides no credible facts or evidence in support of her claims that the Subject Judge 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