

OCT 05 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90050

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 April 2017 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus raising various claims arising out of his incarceration. In May 2017 he filed a “Motion to Dismiss Without Prejudice” in which he took issue with the actions of the court clerk and asserted that the clerk had altered filing dates to conceal a criminal act. He also included certain demands and stated, among other things, “one wrong move and it’s all over but the dieing [sic].”

The same day, the Subject Judge entered an “Order Regarding Threatening Statements,” construing Complainant’s statements in the motion to dismiss as threats to harm himself or others and directing the clerk to transmit a copy of the motion to the warden of the institution where Complainant was confined. The next day, the Subject Judge denied Complainant’s motion to dismiss. After that, Complainant filed an amended § 2241 petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that, in two of his previous cases, he suspected that the Subject Judge had “ex parte proceedings” with the opposing party, but Complainant could not prove it. He states that in the case described above, the Order Regarding Threatening Statements “is enough proof for me

that [the Subject Judge] has in-fact been conducting ex parte proceeding[s] with the Respondent/Defendant.”

Complainant requests that the Subject Judge be removed from all of his cases, and he requests that various documents be sent to him. Complainant also discusses “problems with sending and receiving” mail that he has experienced while incarcerated, and he states that, unless he is released, he will teach other inmates how to avoid being convicted of crimes.

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 engaged in improper ex parte communications 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