

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 04 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90066

**IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____**

IN RE: The Complaint of _____ and _____ 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

_____ and _____ (“Complainants”) have 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 April 2017 Complainants filed a lawsuit against multiple
defendants. After that, a magistrate judge issued an order directing Complainants to
show cause why the case should not be dismissed for failure to pay the filing fee.
Complainants filed a response in which they stated they were willing to pay the fee, but
would wait for the clerk’s office to send them a letter requesting fees. The magistrate
judge then entered an order directing Complainants to pay the filing fee by mid-May
2017.

On May 19, 2017, the magistrate judge issued a report recommending that the case
be dismissed without prejudice due to Complainants’ failure to pay the filing fee. The
next month, Complainants filed a document requesting an extension of time to pay the
fee. In late June 2017 the Subject Judge entered an order adopting the magistrate judge’s
report and recommendation, dismissing the case without prejudice, and denying all
pending motions as moot.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants assert that
the Subject Judge dismissed the case “without Just Cause or Grounds to support” the

decision. They state that the Subject Judge “did not investigate” whether the clerk’s office “had disclosed any transmittal warranting any response as stated in dismissal an [sic] ‘Objection’ when [C]omplainants only received a notice from the clerks requiring the filing fees.” They also state that they filed a motion for an extension of time, but the Subject Judge “did not respond” to the motion. Complainants allege that the Subject Judge’s actions violated their due process rights. They attached documents to their 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.

All of Complainants’ allegations concern the substance of the Subject Judge’s official actions and the order he entered in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge