

FEB 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90071 and 11-17-90072

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 July 2016 Complainant filed a lawsuit against two defendants, raising a claim under the Americans with Disabilities Act (ADA). The next month, Judge _____ issued an order finding that the complaint had failed to state a claim and directing Complainant to file an amended complaint. A few days later, Complainant filed an amended complaint to which he attached various documents.

After that, Judge _____ issued a report recommending that Complainant’s complaint be dismissed with prejudice for failure to state a claim, noting that his amended complaint included no new factual allegations. In October 2016 Judge _____ issued an order adopting the report and recommendation and dismissing the complaint with prejudice. In June 2017 Complainant filed a motion for default judgment, which Judge _____ dismissed as moot.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ “did not follow” federal law and the ADA, and Complainant appears to take issue with Judge _____ finding that his amended complaint failed to state a claim. Complainant states that Judge _____ “would ignore the American[s] with

Disabilities Act (ADA) in the future because I am deaf.” He attached documents to his 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 Complainant’s allegations concern the substance of the Subject Judges’ findings, report, and orders entered in the case, and the allegations are directly related to the merits of the Subject Judges’ 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