

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 19 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-17-90076 and 11-17-90077**

**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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

**Background**

The record shows that in May 2015 Complainant filed a notice of removal in connection with a case originally filed against him in state court pertaining to a child custody dispute. The next month, two plaintiffs filed a motion to remand the matter back to state court. In February 2016 Judge \_\_\_\_\_ issued a report recommending that the motion to remand be granted, generally finding that the action was improperly removed. Over Complainant’s objections, Judge \_\_\_\_\_ entered an order adopting the report and recommendation and remanding the case to state court. Complainant appealed, and this Court dismissed the appeal for lack of jurisdiction.

The record also shows that in January 2017 Complainant filed a “Petition for Writ of Habeas Corpus, Coram Nobis and/or Judicial Review” in which he generally took issue with certain child custody proceedings in state court, and he moved to proceed in forma pauperis (IFP). In June 2017 Judge \_\_\_\_\_ issued a report recommending that the case be dismissed for improper venue and lack of jurisdiction, and because Complainant was not entitled to the issuance of a writ of coram nobis. Judge \_\_\_\_\_

also dismissed Complainant's IFP motion as moot, noting that he paid the filing fee. Over Complainant's objections, in July 2017 Judge \_\_\_\_\_ entered an order adopting the report and recommendation and dismissing Complainant's petition.

Complainant then filed a notice of appeal, a motion to proceed IFP on appeal, and a motion for a certificate of appealability (COA). In September 2017 Judge \_\_\_\_\_ issued an order: (1) denying the IFP motion because Complainant's appeal was frivolous; and (2) denying the motion for a COA because one could not be issued, and, in any event, because he failed to make the requisite showing. In October 2017 this Court clerically dismissed the appeal for want of prosecution.

The record shows that in January 2017 Complainant filed a lawsuit against multiple state court judges, raising claims in connection with certain child custody proceedings, and he moved to proceed IFP. In July 2017 Judge \_\_\_\_\_ issued an order and report: (1) reviewing Complainant's complaint under 28 U.S.C. § 1915(e); (2) denying his IFP motion; (3) recommending that the complaint be dismissed for various reasons; (4) recommending that a request for injunctive relief he made be denied; and (5) recommending that the court deny him leave to appeal IFP. Complainant filed objections to Judge \_\_\_\_\_ order and report, arguing that he improperly screened the complaint under 28 U.S.C. § 1915 because that statute applies only to prisoners. In September 2017 Judge \_\_\_\_\_ adopted the report and recommendation and dismissed the complaint. Complainant filed a notice of appeal, a motion to proceed IFP on appeal, and a motion for a COA. In late September 2017 Judge \_\_\_\_\_ denied Complainant's IFP motion and denied his COA motion as moot.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with reports and orders the Subject Judges issued in his cases, arguing in part that the Subject Judge erroneously remanded one of his cases back to the state court. He alleges that the Subject Judges acted as "Judicial Advocates and Attorneys, in fact" for parties, attorneys, and judges who acted without jurisdiction and covered up illegal acts in state court proceedings.

Complainant states that the Subject Judges screened his complaint under 28 U.S.C. § 1915, which applies only to prisoners, and he contends that it is unconstitutional for courts to deny indigent pro se individuals equal protection of the law, due process, and access to the courts. He alleges that the Subject Judges engaged in misconduct "by unlawfully and systematically screening/denying all incoming Civil Actions" filed by indigent non-incarcerated pro se plaintiffs under § 1915. Complainant also discusses the merits of other cases in which he was involved and takes issue with the actions of individuals other than the Subject Judges. He attached documents to his Complaint.

## Supplement

In his supplemental statement, Complainant takes issue with the clerical dismissal of one of his appeals, and he questions why the clerk did not file a default against the “non[-]answering defendants.” He attached various documents to his supplement. In one attachment, he alleges that the Subject Judges were personally biased against him.

## 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 Judges’ findings, rulings, reports, and orders entered in Complainant’s cases, the allegations are directly related to the merits of the Subject Judges’ 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 allegations that the Subject Judges acted as advocates or attorneys for parties, were biased against him, 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