

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 29 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90079 and 11-18-90080

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 February 2018 Complainant filed a motion naming a warden as a defendant and generally taking issue with the medical care he received at his place of incarceration, and the motion was docketed as a prisoner civil rights action.¹ The next month, Judge _____ issued a report recommending that the case be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g) because Complainant had filed at least three cases that were dismissed as frivolous or for failure to state a claim and he did not show he was in imminent danger of serious physical injury.

In April 2018 Complainant filed a “Motion to Strike” in which he asserted that Judge _____ was a defendant in the case and that his report had no legal effect. The next month, Judge _____ entered an order adopting Judge _____ report and recommendation, noting that Judge _____ was not named as a defendant in the case. Complainant’s appeal was later clerically dismissed for want of prosecution.

¹ In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint pertains to _____, No. “_____”; however, he was not a party to that case. Instead, it appears his allegations pertain to _____, No. _____.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states, “Both Judges named as defendants. Ineligible to answer as Judges.”

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.* (emphasis added). 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’ official actions, report, and order 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