

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 No. 11-18-90084

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ 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

_____ (“Complainant”) has 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”).

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

Background

The record shows that in March 2017 Complainant filed a lawsuit generally
alleging that the defendants denied him his constitutional rights in connection with
certain criminal proceedings. A few days later, the Subject Judge entered an order
dismissing the complaint, finding it failed to allege any viable cause of action and was
“incoherent.” The order permitted Complainant to file an amended complaint by April 7,
2017. After that, Complainant filed a “Response to Amend the Record,” and the Subject
Judge denied the motion, stating that it presented the court with “more unintelligible
nonsense.”

In April 2017 the Subject Judge issued an order dismissing the case because
Complainant had failed to file an amended complaint by the deadline. Complainant filed
a motion objecting to the dismissal, arguing that the court did not consider his Response
to Amend and seeking the Subject Judge’s recusal. The Subject Judge entered an order
considering Complainant’s Response to Amend as an amended complaint and again
dismissing the case for the reasons set forth in the court’s earlier order. The order stated
that it appeared Complainant’s complaints were “‘tax protestor’ gibberish,” and that,
even if his complaint were intelligible, it was barred under Heck v. Humphrey, 512 U.S.

477 (1994). Finally, the Subject Judge denied recusal, stating that earlier adverse rulings were not a basis for recusal. Complainant's appeal was later clerically dismissed for want of prosecution.

In August 2017 Complainant filed in the district court a "Judicial Notice and Proclamation" with attachments, and the Subject Judge entered an order striking the document as nonsensical, noting that it appeared to be more "gibberish." Complainant then filed multiple motions seeking various types of relief, which the Subject Judge denied. In June 2018 Complainant filed a "Writ of Error Objection" in which he sought the Subject Judge's recusal and alleged that the Subject Judge had committed fraud, violated his oath of office, and acted as an attorney on behalf of the defendants. The Subject Judge entered an order construing the filing as a motion to recuse and denying it, noting that adverse rulings were not a basis for recusal. In August 2018 another appeal that Complainant had filed was clerically dismissed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that "the viable cause is the breach of contract writ of attainder [the Subject Judge] has made a error [sic] and has no jurisdiction acting in his person with usurpation violating his oath" He asserts that the Subject Judge did not have authority to act and that all of his orders are void. Complainant complains that the Subject Judge failed to recuse himself from the case and asserts that the Subject Judge was not impartial because he "interjected himself into the proceeding."

Complainant states that the Subject Judge sought to "discourage" him by stating "it's not intellig[e]nt and it's gibb[e]rish to his understanding," and that this showed bias and constituted "verbal abuse." Finally, Complainant states that the Subject Judge knowingly sought to "subvert a fundamental right to re-dress."

Supplements

After he filed his Complaint, Complainant filed three supplemental statements. In the first, Complainant alleges that the Subject Judge violated his oath of office and "practic[ed] law" for the defendants, which constituted a conflict of interest. He attached documents to his first supplement. Complainant's second supplement is comprised of documents in which he reiterates his allegations, asserts that the Subject Judge was incompetent, and alleges that he engaged in fraud "by sitting as Magistrate or as Administrative officer." In his third supplement, Complainant generally reiterates his allegations.


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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in Complainant’s case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge violated his oath of office, was biased against Complainant, treated him in a demonstrably egregious and hostile manner, had a conflict of interest, 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