

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. 11-18-90085

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”).

Background

The record shows that in October 2017 Complainant filed a 28 U.S.C. § 2254
petition for writ of habeas corpus generally challenging certain state court convictions.
He also filed a motion for leave to proceed in forma pauperis (IFP), and the Subject
Judge issued an order that, among other things, granted the IFP motion. In December
2017 the respondent filed a motion to strike Complainant’s § 2254 petition, arguing that
the grounds for relief were facially insufficient and/or confusing. The Subject Judge
granted the motion to strike and directed Complainant to file an amended petition.

In January 2018 Complainant filed an amended § 2254 petition. Later that month,
the Subject Judge issued an order (Document _____) finding that Complainant’s
amended petition did not meet the requirements of the Rules Governing Habeas Petitions
and directing him to file a second amended petition. The order directed the clerk to
transmit to Complainant copies of the form to use in § 2254 cases and an affidavit of
indigency.

The next month, Complainant filed a second amended § 2254 petition raising
various grounds for relief, as well as a memorandum of law in support. The docket sheet
shows that he also paid the \$5.00 filing fee. The Subject Judge entered an order directing
the respondent to respond to the second amended petition. Complainant filed a motion
for a bond hearing or for release, which the Subject Judge denied, finding that he had
failed to establish he was entitled to that relief. Complainant filed a notice of appeal and

a motion for leave to file an interlocutory appeal, arguing in part that the Subject Judge improperly ordered him to pay the \$5.00 filing fee after granting his IFP motion.

In May 2018 the Subject Judge issued an order (Document _____) denying Complainant's motion for leave to file an interlocutory appeal, finding that he had failed to make the necessary showing. With respect to the filing fee, the Subject Judge stated that Complainant paid the \$5.00 filing fee in February 2018 "with no order or request from this Court," and that his "false accusation that the Judge abused her discretion by ordering him to submit the \$5.00 filing fee has no basis in fact." This Court later denied Complainant's motion for a certificate of appealability because he had not made a substantial showing of the denial of a constitutional right. In August 2018 the respondent filed a response to the § 2254 petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that, after his IFP motion was granted, the Subject Judge ordered him to pay the cost to proceed, which made him feel "robbed and/or prejudiced." He alleges that after he made a "legitimate complaint for review on appeal, [the Subject Judge] badgered me and openly accused me of making false accusation against her discretion."

Complainant contends that the Subject Judge "intentionally misle[d]" this Court when she "refused to admit that she signed Document _____ herself," and she "failed to acknowledge the first enumerated part of Document _____ in her reciprocal Document _____ where she treated [Complainant] as the wrongdoer." Complainant states that he fears he will be retaliated against and cannot have a fair hearing before the Subject Judge, and that he does not "feel safe" having his habeas petition "in chambers with any judicial assistant associated with" the Subject Judge. 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.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge 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