

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 30 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90094

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 May 2018 Complainant filed a lawsuit against two defendants raising multiple claims for relief. The next month, the defendants, through an Assistant United States Attorney, filed a motion to dismiss the amended complaint, generally arguing that Complainant failed to state a claim on which relief could be granted. On the same day, Complainant filed a motion for summary judgment and a response to the motion to dismiss.

After that, Complainant filed motions seeking a default and a default judgment, a motion to strike, and a motion for judgment on the pleadings. In his motions, Complainant generally argued that the defendants had not appeared in the case because their attorney failed to file a notice of appearance. In July 2018 the Subject Judge entered an order denying Complainant’s motions, finding that the motion to dismiss signed by the defendants’ attorney constituted the defendants’ appearance in the case, and that they complied with a local rule governing appearances and Fed. R. Civ. P. 11.

Complainant then filed additional motions in which he argued that the defendants’ attorney failed to file an appearance in the case. The defendants filed a motion to stay the case until the court had ruled on their motion to dismiss, and the next day, the Subject Judge granted the motion to stay. Complainant filed motions for a default, for a default judgment, and for judgment on the pleadings, reiterating his argument that the defendants’ attorney had not filed an appearance in the case. In August 2018 the Subject Judge denied Complainant’s motions, determining that a formal notice of appearance was

not required under the relevant rules and that the defendants' motion to dismiss served as the notice of appearance.

After that, Complainant filed multiple motions seeking various types of relief, which the Subject Judge denied due to Complainant's failure to comply with a local rule. Complainant again filed multiple motions seeking various types of relief. In late August 2018 the Subject Judge issued an order granting the defendants' motion to dismiss and dismissing the case, generally finding that Complainant failed to establish that he was entitled to relief on his claims.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that it appears the Subject Judge "was egregious in her decision to fraudulently accept" the attorney for the defendants' motion to dismiss. He contends that the attorney "willfully and intentionally omitted portions of" a local rule from the notice of appearance "to assist the United States Attorney in covering up the fact" that the motion to dismiss was not filed by the attorney of record. Complainant then states that the Subject Judge knew the attorney "failed to conform and be subject to the requirements of" Rule 11 and "willfully failed" to file a proper notice of appearance, which he asserts the Subject Judge "egregiously" covered up "to keep from ruling in [Complainant's] favor."

Complainant states that the Subject Judge "made another egregious decision" to grant the defendants' motion for a stay. He alleges that the Subject Judge decided to "punish" him for responding to the motion to dismiss too soon, and to "reward" the United States Attorney by granting the motion for a stay before he had a chance to respond to it. Complainant states that the Subject Judge "approved that Motion in order to deliberately delay the Defendants['] response to the Motion for Summary Judgment." He attached various 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 acted with an illicit or improper motive, deliberately delayed the case, 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