

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 11 2019

David J. Smith
Clerk

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

Judicial Complaint Nos. 11-18-90128 and 11-18-90129

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 August 2018 Complainant filed a civil rights action against multiple defendants and an “Affidavit of financial Statement,” which was docketed as a motion for leave to proceed in forma pauperis (IFP). Judge _____ issued an order denying the IFP motion, finding that the court was unable to rule on the motion based on the limited information provided in the affidavit. The order directed Complainant to complete the appropriate IFP form. After that, Complainant filed, among other things, a document requesting that the Subject Judges provide “proof of jurisdiction.”

In September 2018 Judge _____ issued a report recommending that the case be dismissed without prejudice due to Complainant’s failure to comply with the order requiring him to complete the IFP form. Later that month, Judge _____ issued an order adopting the report and recommendation, dismissing the case without prejudice, and denying all pending motions as moot.

The record shows that Complainant filed another civil rights action against multiple defendants in August 2018, as well as an “Affidavit of financial Statement” that was docketed as a motion proceed IFP. Judge _____ denied the IFP motion and directed Complainant to complete the appropriate IFP form. Complainant then filed,

among other things, a motion for a default judgment, which Judge _____ denied as moot in light of his impending report.

In September 2018 Judge _____ issued a report recommending that the case be dismissed without prejudice due to Complainant's failure to comply with the order requiring him to complete the IFP form. Complainant then filed multiple documents, including one in which he appeared to complain that he had not consented to Judge _____ participation in the case. In October 2018 a district judge who is not one of the Subject Judges adopted Judge _____ report, dismissed the case, and denied all pending motions as moot.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ "failed to file the correct information received" and issued a frivolous order "while trying [to] gain authority without consent." Complainant appears to take issue with the orders denying his IFP motions, stating the affidavit he submitted clearly established "the consul insolvency." He states that the Subject Judges filed "information as ward of the state, asking for a motion to grant the court[']s authority under de facto colorable court." Finally, he appears to allege that the Subject Judges violated the Supremacy Clause of the United States Constitution, violated their oaths of office, and committed fraud.

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' official actions, findings, reports, recommendations, and orders in the cases, the allegations are directly related to the merits of the Subject Judges' 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 Judges violated their oaths of office, committed fraud, 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