

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 20 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90131

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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2015 Complainant, through his attorney _____, filed an amended complaint against multiple companies, raising claims of employment retaliation and breach of contract. After various proceedings, in April 2016 the defendants filed a “Motion to Enforce Settlement,” stating that the parties had reached a settlement agreement and that it should be enforced. _____ filed a “Motion to Establish Attorney’s Charging Lien,” asking the court to order that the settlement amount be paid into the court’s registry and that he be permitted to collect his fee from the proceeds. _____ also filed a motion to withdraw as Complainant’s attorney, which a magistrate judge granted.

The magistrate judge later issued a report recommending that the defendants’ Motion to Enforce Settlement be granted and that _____ Motion to Establish Attorney’s Charging Lien be granted in part and denied in part. Over Complainant’s objections, in January 2017 the Subject Judge entered an order adopting the report and recommendation, finding that the parties had reached a settlement with certain terms and ordering the defendants to deposit the settlement proceeds in the court’s registry. After that, Complainant filed a notice of appeal and a motion to recuse the Subject Judge,

arguing that she had violated his due process rights by, among other things, refusing to provide him with her order and relying on filings from _____. In August 2017 the Subject Judge entered an order denying the motion to recuse.

In June 2018 this Court issued an opinion in which it, among other things: (1) affirmed the Subject Judge's order granting the motion to enforce the settlement agreement; and (2) held that the Subject Judge did not abuse her discretion in directing that the settlement award be deposited with the court or in denying the motion to recuse. In July 2018 Complainant filed: (1) a motion to reopen the case and to disperse the settlement award to him; and (2) a motion to disburse funds from the attorney's lien to him. _____ filed a motion requesting that the court release a certain amount of money to him to satisfy the charging lien. Complainant filed a response to _____ motion, _____ filed a reply, and Complainant filed an additional response. In December 2018 the Subject Judge entered an order reopening the case and referring to the magistrate judge all matters pertaining to disbursement of the funds being held in the court's registry. Ten days after that, the court made a docket entry noting the case had been referred to the magistrate judge ten days earlier.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant complains that the Subject Judge has not released money held in the court registry to him, even though he contends that there is "no legitimate reason" for not doing so. He asserts that the Subject Judge is continuing to retaliate against him by holding the money so he cannot use it to hire an attorney to correct what he asserts are erroneous rulings by the district and circuit courts. Complainant states that the Subject Judge "has a history of communicating with Defendants without [Complainant] which is why [she] needs to be removed from this case," "has a history of ruling against [Complainant] for no legal basis," and "will not follow any rule of law." He also takes issue with the actions of _____, alleging that he made false statements and threatened Complainant. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant takes issue with the Subject Judge's delay in ruling on his motion to reopen the case and to disburse funds to him, and he asserts that the Subject Judge intentionally did not refer the case to the magistrate judge until ten days after her order. Complainant states that the Subject Judge and the magistrate judge do not have discretion to keep undisputed funds in the court's registry, and that they are discriminating and retaliating against Complainant because he is not an attorney or represented by an attorney. He also states that the Subject Judge has "interfered" in other cases in which he was involved with the goal to "keep money away" from him.

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 that Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge retaliated against him, had improper discussions with the defendants, intentionally delayed taking action in 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