

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90091

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge _____ of the United States 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 January 2019 Complainant filed a complaint against certain city offices and a city official, alleging that the defendants had violated federal law regarding an administrative child support process. On January 17, 2019, the court’s clerk’s office issued a summons for each of the four defendants. On February 11, 2019, Complainant filed returns of service. At that time, three of the defendants’ answers were due February 12, 2019, and the remaining defendant’s answer was due February 22, 2019.

The defendants moved for an extension of time to answer the complaint. On February 19, 2019, Complainant filed an “Affidavit of Entry of Default,” asserting that the defendants had not timely answered the complaint. That same day, Complainant also filed an opposition to any extension of time to file an answer.

On February 27, 2019, the Subject Judge granted three of the defendants an extension of time to answer the complaint, extending the answer deadline to March 15, 2019. The remaining defendant, whose first motion for an extension of time had not been addressed, filed another motion for an extension of time. The Subject Judge granted that motion, extending the answer deadline to March 15, 2019. Complainant filed a motion challenging the grant of an extension of time to file the answers. On March 15, 2019, the defendants filed motions to dismiss the complaint.

Complainant filed several motions seeking a default judgment against the defendants. On July 15, 2019, the Subject Judge granted the motions to dismiss the complaint because the court lacked personal jurisdiction over the defendants. The Subject Judge also denied Complainant's pending motions seeking default. The Subject Judge found that the defendants had filed their motions to dismiss within the time required by the Federal Rules of Civil Procedure. The court's docket reflects that Complainant did not appeal the Subject Judge's order.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the clerk of court "cherry pick[ed] which motions, pleadings she decided [the Subject Judge] would view for order to be granted." Complainant alleges that this is an abuse of authority, reflects an impairment of the clerk's judgment, and is not applying the court's rules fairly. Complainant alleges that the defendants were required to serve an answer to the complaint within 21 days after service and that they did not do so. Complainant further alleges that the failure to file an answer waives any defenses and strips the defendants of any leave to amend deficiencies. Complainant objects to the Subject Judge's orders granting an extension of time to file an answer, and he contends that the defendants were unjustly enriched by the extension. Complainant also alleges that the clerk improperly docketed entries from the defendants because their counsel was not authorized to practice law in the State and did not apply to appear pro hac vice. Complainant asserts that, in processing and ruling on the extension motions, the Subject Judge and clerk committed fraud and engaged in misconduct.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant's allegations concern the substance of the Subject Judge's 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge 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