

DEC 17 2015

Amy C. Nerenberg  
Acting Clerk of Court

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-15-90139**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Magistrate 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.

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**ORDER**

\_\_\_\_\_ (“Complainant”) has filed this Complaint against United States Magistrate 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 2011 Complainant filed a prisoner civil rights action against a doctor, raising claims relating to medical care he received (the First Case). After various proceedings, in March 2012 Complainant filed an amended complaint. The next month, he filed a Motion to Compel, seeking to have the defendant produce an “operative report” and consent form. The defendant filed a response stating that the documents were not in his possession, custody, or control, and that they had been disclosed and produced after they were received in response to a subpoena issued to a third party. The Subject Judge denied the Motion to Compel for the reasons stated in the defendant’s response.

In June 2012 the defendant filed a motion for summary judgment. In January 2013 the Subject Judge issued a report recommending that the motion for summary judgment be granted and that the case be dismissed with prejudice because Complainant had failed to establish any constitutional violation. Over Complainant’s objections, the district judge adopted the Subject Judge’s report and recommendation and granted the defendant’s motion for summary judgment. This Court affirmed the judgment on appeal.

The record also shows that in July 2011 Complainant filed a civil rights action against multiple defendants, raising various claims (the Second Case). In November 2011 the Subject Judge issued a report recommending that certain claims be dismissed

and that others be allowed to continue, and the district judge later adopted the report and recommendation. In June 2012 the remaining defendants filed a motion for summary judgment. In February 2013 the Subject Judge issued a report recommending that the motion for summary judgment, treated as a motion to dismiss, be granted, finding that Complainant had failed to exhaust his administrative remedies. The Subject Judge noted that Complainant could file objections to the report within 14 days. Over Complainant's objections, the district judge adopted the report and recommendation and granted the defendants' motion for summary judgment, treated as a motion to dismiss. This Court dismissed Complainant's appeal as frivolous.

The record shows that in January 2015 Complainant filed a prisoner civil rights action against multiple defendants, raising claims relating to the medical care he received at his place of incarceration (the Third Case). He moved to proceed in forma pauperis, and the Subject Judge granted the motion. After that, Complainant filed an amended complaint. In June 2015 the Subject Judge issued a report in which he stated that Complainant had filed the amended complaint "while confined at the \_\_\_\_\_," and that because he was a prisoner seeking redress "against governmental entities, employees, or officers, his complaint is subject to screening under 28 U.S.C. § 1915A." The Subject Judge recommended that the complaint be dismissed for failure to state a claim "pursuant to 28 U.S.C. § 1915A" and that the "motion for protective order be denied." Over Complainant's objections, the district judge adopted the Subject Judge's report and dismissed the amended complaint.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge engaged in "continuous misdeeds against" Complainant in multiple cases. With respect to the First Case, Complainant takes issue with the Subject Judge's denial of the Motion to Compel, and he alleges that the Subject Judge and others relied on a document "that in reality does not exist, for no-one can produce it as real evidence." As to the Second Case, Complainant alleges that the Subject Judge "failed to advise [Complainant] of the consequences of [his] failure to file an objection to [the Subject Judge's] Report and Recommendations to close the case."

With respect to the Third Case, Complainant contends that the Subject Judge made certain "false statements" in his report and recommendation, specifically the statements that Complainant: (1) was confined at the "\_\_\_\_\_", when he did not use those words in his complaint; (2) had filed suit "against governmental entities, employees, or officers," when he had not; and (3) had filed a "motion for protective order," when he had not. Complainant also asserts that the Subject Judge "used the wrong authority" when he screened the complaint under 28 U.S.C. § 1915A because Complainant did not file suit against governmental entities, employees, or officers.

## 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, findings, reports, and orders entered in Complainant’s cases, 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 allegations that the Subject Judge knowingly made false statements 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**.

  
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Chief Judge