

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
FEB 22 2016  
Amy C. Nerenberg  
Acting Clerk of Court

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

**Judicial Complaint No. 11-15-90163**

**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 April 2015 Complainant filed a pro se employment discrimination action against three defendants, raising various claims. On September 21, 2015, the Subject Judge entered an order stating that it did not appear that service had been effectuated on the defendants and directing Complainant to show cause in person and in writing why the case should not be dismissed for failure to prosecute. On October 1, 2015, Complainant filed a written response stating: “The delay in Service of Process to the Defendant was due to Plaintiff’s excessive medical needs, and excessive medical expenses.” The Subject Judge held a show cause hearing that same day and gave Complainant until October 9, 2015 to supplement her response to the show cause order.

On October 7, 2015, Complainant filed “Objections to Magistrate’s Motion to Dismiss for Want of Prosecution” in which she requested a continuance to allow her to serve the defendants and stated that the court had made a “clerical error” by omitting a portion of her complaint from the “docket file.” After that, the Subject Judge granted Complainant until November 16, 2015 to serve the defendants, and noted that a failure to comply would result in a recommendation that the action be dismissed. On November 6, 2015, Complainant filed a “Certificate of Service” in which she certified that she had served a copy of her complaint on one of the defendants by first class mail.

On November 18, 2015, the Subject Judge issued a report recommending that Complainant's case be dismissed without prejudice due to her failure to effectuate service on the defendants and failure to comply with the court's directives regarding service. The Subject Judge found that Complainant's attempted service by mail was deficient in several respects. On the same day, the Subject Judge issued an order directing the clerk to serve the report and recommendation on the parties. After that, Complainant filed objections to the report and recommendation, as well as a Motion to Recuse the Subject Judge, alleging that he had exhibited "deliberate indifference and discriminatory bias" against her.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first contends that the Subject Judge "held [Complainant] accountable for a four month case delay and other clerical errors made by the Court." Complainant alleges that the Subject Judge scheduled a hearing with a two-day notice "for the purpose of identifying [Complainant] by race and disability." She asserts that the Subject Judge was 20 minutes late to the hearing, questioned her "physical and medical abilities to manage" the proceeding, and advised her to "dismiss this complaint."

Complainant alleges that the Subject Judge "applied a different set of federal court rules to [her] regarding service of process to the Defendant," and that the "same rule was not applied to previous case filing" that she had made in a different case. She notes that she did not receive an answer to her complaint from a defendant. Finally, Complainant alleges that the Subject Judge "interfered with [her] right to due process, and discriminated against [her] by devising a plan to dismiss [her] employment discrimination complaint based on [her] status as ProSe litigant, based on [her] status as a qualified individual with a disability, and based on [her] race." She attached to her Complaint a copy of the Subject Judge's November 2015 report and recommendation.

### 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 findings, report, and orders entered 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, she provides no credible facts or evidence in support of her allegations that the Subject Judge discriminated against her 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