

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
MAR 03 2016  
Amy C. Nerenberg  
Acting Clerk of Court

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

**Judicial Complaint No. 11-15-90168**

**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 approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2015 Complainant filed a lawsuit against \_\_\_\_\_ and three individuals, raising various claims. He also filed a motion for leave to proceed in forma pauperis (IFP), a motion for a temporary restraining order (TRO) and a preliminary injunction, and a “Motion For Referral To Volunteer Attorney Program” (Motion for Referral). On August 24, 2015, the Subject Judge entered an order dismissing the complaint without prejudice, finding that it was a “quintessential shotgun pleading,” and denying the IFP motion and motion for a TRO and preliminary injunction. By separate order, the Subject Judge denied the Motion for Referral.

On August 26, 2015, Complainant filed an amended complaint against the same defendants, as well as another motion to proceed IFP, Motion for Referral, and motion for a TRO and injunctive relief. That same day, the Subject Judge dismissed the amended complaint without prejudice as a shotgun pleading, noting that it did not assert any counts and did not specify the defendant against which any claims were brought. The Subject Judge also denied Complainant’s motions without prejudice. After that, Complainant filed a second amended complaint naming only \_\_\_\_\_ as a defendant,

and he filed motions to proceed IFP, for reconsideration of the denial of his motion for injunctive relief, and for leave to appeal.

On August 31, 2015, the Subject Judge entered an order granting the IFP motion and denying the motion for reconsideration and motion for leave to appeal. In early September 2015 Complainant filed another motion for a TRO and injunctive relief, which the Subject Judge denied because the motion did not establish that issuance of injunctive relief without notice to the defendants was warranted and there were no indications that the defendants had been served with summonses and the second amended complaint. The Subject Judge noted that Complainant could refile the motion after the defendants were properly served and directed him to perfect service by December 21, 2015, or show cause why the action should not be dismissed. The Subject Judge also issued an "Order Providing Instructions to Pro Se Litigant" which, among other things, informed Complainant that he was to comply with all federal and local rules and noted that pro se litigants must supply the court with their email addresses and telephone numbers. Complainant then filed a motion for reconsideration of the court's order on his motion for a TRO and injunctive relief, as well as another Motion for Referral, and the Subject Judge denied those motions. Complainant appealed, and this Court later dismissed the appeal for lack of jurisdiction.

Complainant then filed a motion to reopen the case and a motion for injunctive relief. On October 7, 2015, the Subject Judge granted the motion to reopen, but denied the motion for injunctive relief, noting that there still was no indication that the defendants had been properly served. Complainant then filed a motion to waive the fee for the United States Marshals Service to serve the defendants, which the Subject Judge granted. On November 10, 2015, Complainant filed a notice stating that there had been unusual delay in the United States Marshals' service on the defendants. After that, three individuals filed "Motions to Quash Service," noting that although they were named as defendants in the initial and first amended complaints, they were not named as defendants in the operative second amended complaint. The Subject Judge granted the Motions to Quash.

On November 30, 2015, Complainant filed a motion for a temporary and permanent injunction. On December 11, 2015, \_\_\_\_\_ filed a motion to dismiss the second amended complaint. The next day, the Subject Judge denied the motion for injunctive relief without prejudice, noting that Complainant could file a renewed motion after the court ruled on the motion to dismiss. In mid-December, Complainant filed another motion for injunctive relief. The Subject Judge denied the motion, noting that Complainant had filed it before the court ruled on the defendant's motion to dismiss in contravention of the court's order, and the Subject Judge stated that future failure to comply with court orders could result in sanctions, including dismissal of the case. Complainant then filed a notice of appeal. The Subject Judge entered an order staying

the matter until the conclusion of the appeal and directing the clerk to close the case for administrative purposes only.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant describes the proceedings and generally takes issue with the Subject Judge's orders entered in the case. He contends that the Subject Judge dismissed his complaints and denied his motions despite being aware that he was physically and mentally disabled, and he complains that the Subject Judge failed to inform him of certain matters. Complainant generally alleges that the Subject Judge imposed greater burdens upon him as a pro se litigant than those imposed on attorneys, and he suggests that she did so with an improper motive to discourage him in the case. Complainant states, "The Federal Judiciary is the only entity in the U.S. exempt from complying with Disability Rights illustrating overall institutional bias."

Complainant contends that the Subject Judge acted outside the scope of her authority in connection with service of process and by threatening to dismiss the case. He also alleges that she failed to comply with her "duty of properly administering matters of the Court" by: (1) failing to address actions by the defendant's attorney that contributed to delay in the proceedings; (2) failing to respond to certain filings; and (3) failing to rule in a timely manner on certain requests. He states that the Subject Judge attempted to "'rewrite' her own laws as it pertains to" Complainant. He also asserts that the Subject Judge's bias was revealed when she ruled on a Motion to Quash filed by an attorney before a notice of appearance had been filed, yet reminded Complainant, a "pro se disabled Plaintiff," that he needed to provide the court with his email address.

Complainant asserts that a website listed three of the Subject Judge's "Civic Activities" as taking place "at Colleges or College Committee" located in \_\_\_\_\_, which is where the defendant is located. He states, "This Judge spends all of her 'free time' and/or community involvement in the area of \_\_\_\_\_ Colleges in some capacity and was [ ]reckless and operating outside the area of law by not immediately recusing herself."

### Supplement

In his supplemental statement, Complainant asserts that the Subject Judge "has outright lied, and acted beyond her legal authority." He takes issue with the Subject Judge's rulings on his motions for injunctive relief, asserting that she engaged in "trickery" and attempted to hold his request for injunctive relief "hostage." Complainant states that the Subject Judge's husband is a partner at "one of the largest international law firms," and that the Subject Judge "has a very strong personal interest in big corporations, and governmental entities, of whom this firm represents." He contends that the Subject

Judge should have recused herself from the case, and he asserts that her language and behavior toward him are “openly hostile, contradictory of rule and complete and utter disregard for United States and code.”

### 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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders entered in the case, including her failure to recuse and any perceived delay, 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 was biased against him, acted with an improper motive, had a conflict of interest, lied, treated Complainant in a demonstrably egregious and hostile manner, 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