

JUN 07 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90028**

**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 March 2015 Complainant filed a prisoner civil rights action against multiple defendants, alleging that he was being confined in segregation in violation of the United States Constitution. After the district judge dismissed his initial complaint, Complainant filed a motion to amend his complaint and a proposed amended complaint raising claims pertaining to his classification and confinement at his place of incarceration. On June 1, 2015, the district judge entered an order allowing Complainant to file the amended complaint and allowing him to proceed in forma pauperis in the case.

The next month, Complainant filed a motion to supplement his complaint and a proposed supplemental complaint. Towards the end of July 2015, the defendants filed a motion to dismiss the amended complaint and a motion to stay discovery pending resolution of their motion to dismiss. On July 28, 2015, the Subject Judge issued a notice advising Complainant of his right to file a response to the motion to dismiss within 30 days. On August 13, 2015, the defendants filed a response in opposition to Complainant’s motion to file a supplemental complaint. Complainant then filed, among other things, a response to the motion to dismiss in which he sought injunctive relief. He also filed a motion for extension of time to file a reply to the defendants’ response, which the Subject Judge granted on September 1, 2015, providing him with an additional 30 days to file a reply.

Over the next several months, from September 2015 to late February 2016, Complainant filed various documents, including additional motions to supplement or amend his complaint. On March 10, 2016, the Subject Judge issued an order and recommendation in which he: (1) recommended that the defendants' motion to dismiss be granted in part and denied in part; (2) recommended that Complainant's motion for injunctive relief and his four motions to supplement be denied; and (3) denied Complainant's remaining motions. Both parties filed objections to the report and recommendation. In late March 2016, the district judge entered an order adopting the Subject Judge's report and recommendation with modifications.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge exhibited an "established and consistent pattern of habitual delay" in rendering decisions on Complainant's motions in the case, which prevented Complainant from prosecuting his case and denied him access to the court. Complainant states that he has filed several motions that "have been pending for months" and that the Subject Judge has not taken any action in the case since September 2015. He alleges that his health is worsening because of the conditions of his confinement, and he fears that without court intervention it is possible he will suffer permanent damage or disability due to his declining health.

### 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.”

All of Complainant’s allegations of delay in the case concern the substance of the Subject Judge’s official actions, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.

A handwritten signature in black ink, appearing to read "E. J. Kramer", is written over a horizontal line.

Chief Judge