

JUL 05 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90029**

**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 February 2016 Complainant filed an employment discrimination action against a company and a police department, raising various claims. In her complaint, Complainant extensively discussed “gang stalking” and stated, among other things, that she believed a police officer told the company not to hire her because “she was being used in a Domestic Terroristic/ Police Stating/ Gang Stalking operation . . .” She also moved for leave to proceed in forma pauperis (IFP).

In March 2016 the Subject Judge issued a report in which he stated, “Most of the allegations in the complaint are in my unprofessional opinion delusionary. They are also otherwise incomprehensible.” The Subject Judge ultimately recommended that the case be transferred to a different district court because the defendants were located in that district and the events giving rise to the complaint also occurred there. In late March 2016 the district judge adopted the report and recommendation and transferred the case to a different district court.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judge engaged in misconduct when he stated in the report and recommendation that Complainant’s allegations were in his “unprofessional opinion

delusionary” and “otherwise incomprehensible.” She states that the Subject Judge’s “review of her complaint in a[n] unprofessional capacity would compromise the effective and expeditious administration of business of the court.”

Complainant also states that the Subject Judge’s “conduct expressed” in the report “would cause public to believe he is incompetent,” and that the report was “based upon his opinion rather than the fact presented in the claim, which would cause [the Subject Judge] to respond in a delusionary manner of false belief thus making case that he reviews appear incomprehensible.” Finally, she asserts that in the district court, she “presented all information pertinent to” her case. She attached various documents to her Complaint.

### 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 report and recommendation, 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, she provides no credible facts or evidence in support of her allegations that the Subject Judge was incompetent 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