

JUL 25 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-16-90036 through 11-16-90041**

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

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IN RE: The Complaint of \_\_\_\_\_ against U.S. Magistrate Judge \_\_\_\_\_ and U.S. District Judge \_\_\_\_\_ of the U.S. District Court for the \_\_\_\_\_ District of \_\_\_\_\_, and U.S. Circuit Judges \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ of the U.S. Court of Appeals for the \_\_\_\_\_ Circuit, 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 \_\_\_\_\_, United States District Judge \_\_\_\_\_, and United States Circuit Judges \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, “the Subject Judges”), 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 May 2014 Complainant filed in the district court a document entitled “Preliminary Injunction/Imminent Danger” in which he named multiple defendants and generally took issue with the treatment he had received at multiple places of incarceration. Judge \_\_\_\_\_ issued an order noting that the allegations in the complaint were “confusing and unclear” and directing Complainant to file an amended complaint containing a separate paragraph as to each defendant explaining what the defendant had allegedly done.

In June 2014 Complainant filed a motion for a temporary restraining order (TRO) seeking to prevent certain individuals from taking various actions. Later that month, Judge \_\_\_\_\_ issued a report recommending that the motion be denied. Judge \_\_\_\_\_ found that the motion was meritless and premature, and that Complainant did not state a prima facie case for injunctive relief because he had since been transferred to a different facility and the named defendants were not at that facility. Judge \_\_\_\_\_ later entered an order adopting the report and denying the motion for a TRO.

Meanwhile, Complainant filed a motion for the appointment of counsel, a motion for leave to proceed in forma pauperis (IFP), and an amended complaint against numerous defendants. Judge \_\_\_\_\_ denied without prejudice the motion for appointment of counsel and granted the IFP motion. He also entered an order directing Complainant to file a final amended complaint. The order noted that the 85-page amended complaint named 67 defendants and alleged constitutional violations occurring at five different correctional facilities in various locations, some of which were outside of the court's venue. The order directed Complainant to refrain from including allegations against parties outside of the court's venue and stated that it did not appear that certain claims were properly joined.

After that, Complainant filed another motion for a TRO, generally seeking to enjoin various defendants from violating his constitutional rights. A few days later, Judge \_\_\_\_\_ issued a report recommending that the motion be denied, finding that it was meritless, premature, and did not adequately show an indication of immediate, irreparable harm. In August 2014 Complainant filed a motion for extension of time to file the final amended complaint, objections to the order requiring him to file an amended complaint, and objections to Judge \_\_\_\_\_ report and recommendation on the motion for a TRO. Judge \_\_\_\_\_ granted the motion for an extension of time. Judge \_\_\_\_\_ then adopted Judge \_\_\_\_\_ report and denied the motion for a TRO.

In September 2014 Complainant filed another motion for extension of time to file an amended complaint, and Judge \_\_\_\_\_ granted the motion, stating that the final amended complaint must be filed no later than October 8, 2014. On October 10, 2014, Judge \_\_\_\_\_ issued a report recommending that the case be dismissed for lack of prosecution due to Complainant's failure to comply with the court's orders. Complainant then filed a motion to disqualify Judge \_\_\_\_\_, alleging that he was biased and prejudiced against Complainant, neglected his duty, and engaged in criminal actions. Judge \_\_\_\_\_ denied the motion, finding that Complainant did not show that recusal was warranted. Complainant also filed objections to the report and recommendation in which he indicated that he was unable to comply with the orders due to prison conditions.

In November 2014 Judge \_\_\_\_\_ rejected Judge \_\_\_\_\_ report and ordered Complainant to file an amended complaint on or before November 26, 2014, noting that a failure to comply would result in dismissal of the action without further notice. Complainant then filed a final amended complaint. In December 2014 Judge \_\_\_\_\_ issued a report recommending that the case be dismissed because the complaint did not comply with the court's prior orders in that it, among other things, continued to include claims against defendants that Complainant had been ordered not to include. Over Complainant's objections, in January 2015 Judge \_\_\_\_\_ affirmed the report in part and dismissed the final amended complaint without prejudice. Complainant filed a motion for reconsideration, which Judge \_\_\_\_\_ denied. He also filed a notice of appeal, and he later filed another motion for a TRO.

On appeal, in May 2015 Complainant filed a motion for appointment of counsel, and a judge of this Court, who is not one of the Subject Judges, denied the motion because the issue on appeal was not complex or novel. Complainant filed a motion for reconsideration. In September 2015 a two-judge panel comprised of Judges \_\_\_\_\_ and \_\_\_\_\_ denied the motion for reconsideration because Complainant offered no new evidence or arguments of merit to warrant relief.

In October 2015 a panel of this Court comprised of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ affirmed the district court's dismissal of Complainant's complaint without prejudice for failure to comply with the court's orders. The next month, Complainant filed a motion for extension of time to file a petition for rehearing en banc, and he filed a petition for panel rehearing. In mid-November 2015 Judge \_\_\_\_\_ issued an order granting Complainant a 30-day extension of time to request rehearing.

In February 2016 the panel comprised of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ denied the petition for panel rehearing, and the mandate issued after that. In March 2016 Complainant filed a motion to recall the mandate, stating that this Court had not ruled on his petition for rehearing en banc. Later that month, Judge \_\_\_\_\_ denied the motion to recall the mandate. Complainant filed a motion for reconsideration, which the panel of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ denied.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant describes the proceedings in the district court and in this Court, and he generally takes issue with the Subject Judges' findings, reports, orders, and opinion. He also discusses the merits of his underlying claims and raises allegations against the defendants involved. Complainant then contends that, despite his compliance with Judge \_\_\_\_\_ orders requiring him to file amended complaints, Judge \_\_\_\_\_ required him to continue to file amended complaints, made inaccurate statements, "threatened to transfer the case" to another district, and found that the final amended complaint failed to comply with court orders. He also takes issue with Judge \_\_\_\_\_ finding that his final amended complaint failed to comply with court orders.

Complainant then takes issue with Judge \_\_\_\_\_ denial of two motions for a TRO, asserting that the motions contained sufficient allegations, and he complains that Judge \_\_\_\_\_ failed to rule on an additional motion for a TRO. Complainant takes issue with this Court's denial of his motion for appointment of counsel and Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ decision affirming the dismissal of his complaint. He also takes issue with the denial of the petition for panel rehearing, and he appears to complain that his petition for rehearing en banc was returned to him. Finally, Complainant states that there is "clear and convincing evidence of misconducts and

criminal offenses, including conspiracy to and/or discriminations/retaliations/abuse of authorities among others . . . .”

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 Judges’ official actions, findings, reports, opinions, and orders entered in the case and on appeal, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his allegations that the Subject Judges committed criminal offenses, were part of a conspiracy, discriminated against him, 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