

AUG 11 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90047**

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

---

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.

---

**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 January 2007 Complainant filed a lawsuit against three defendants, raising claims related to a sentence he received in state court. In March 2007 the Subject Judge issued a report recommending that the action be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2) because the defendants were immune from suit. Over Complainant’s objections, the district judge adopted the report and recommendation and dismissed the complaint. Complainant appealed, and this Court dismissed the appeal as frivolous.

The record shows that in July 2008 Complainant filed a lawsuit against two defendants, alleging that one had reported false information about him and the other had printed it. After denying certain motions that Complainant had filed, in October 2008 the Subject Judge issued a report recommending that the action be dismissed for failure to state a claim on which relief could be granted. Over Complainant’s objections, the district judge adopted the report and recommendation and dismissed the action. This Court clerically dismissed Complainant’s appeal for want of prosecution.

The record shows that in August 2008 Complainant filed a lawsuit against one defendant, alleging that the defendant had altered an order of probation to increase Complainant’s term of probation. In October 2008 the Subject Judge denied two motions that Complainant had filed, and the next month, the Subject Judge issued a report

recommending that the action be dismissed for failure to state a claim on which relief could be granted. Over Complainant's objections, the district judge adopted the report and recommendation and dismissed the action. Complainant appealed, and this Court affirmed the district court's judgment.

The record shows that in August 2008 Complainant filed another lawsuit raising claims pertaining to his former attorney's representation. In October 2008 the Subject Judge issued a report recommending that the action be dismissed for failure to state a claim on which relief could be granted. Over Complainant's objections, the district judge adopted the report and recommendation and dismissed the action. This Court dismissed Complainant's appeal as frivolous.

The record also shows that in September 2008 Complainant filed a lawsuit against three defendants, raising claims related to the seizure of his property. In January 2009, after denying two motions, the Subject Judge issued a report recommending that the action be dismissed for failure to state a claim on which relief could be granted and that any state law claims be dismissed without prejudice. After Complainant filed objections to the report, the Subject Judge issued an order finding that it was possible Complainant's due process challenge to certain forfeiture proceedings was not barred by the statute of limitations. The order directed him to file an amended complaint showing how the defendants had violated his rights in connection with the forfeiture. Complainant filed a motion to amend his complaint, which the Subject Judge granted. He also filed a motion to amend his complaint to include additional defendants, which the Subject Judge later denied.

The defendants filed motions to dismiss the amended complaint. In November 2009 the Subject Judge issued a supplemental report recommending that the defendants' motions to dismiss be granted and that the action be dismissed for failure to state a claim on which relief could be granted, generally finding that the court lacked subject matter jurisdiction over Complainant's claim related to the forfeiture action. Over Complainant's objections, the district judge adopted the report and recommendation, granted the defendants' motions to dismiss, and dismissed the action. Complainant appealed, and this Court affirmed the district court's judgment.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge is biased against African Americans. Complainant attached a "Motion to Recuse and Prohibit" in which he alleges that the Subject Judge is biased and prejudiced against Complainant as a pro se litigant and that he was "impartial" in his rulings because of his personal bias against Complainant. Complainant also states "[i]t appears that the [Subject Judge] has conspired with the State Actors to deprive

[Complainant] of his PROPERTY INTEREST.” Complainant seeks to have the Subject Judge recuse himself from Complainant’s cases.

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 official actions, findings, orders, and reports and recommendations, 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, he provides no credible facts or evidence in support of his allegations that the Subject Judge is biased against African Americans, is biased or prejudiced against Complainant, was part of a conspiracy, 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**.



---

Chief Judge