

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 12 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-18-90012**

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

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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.

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**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”).

**Background**

The record shows that in May 2015 Complainant filed a voluntary petition for Chapter 13 bankruptcy and an initial Chapter 13 plan. After filing multiple amended Chapter 13 plans, in January 2016 she filed a fourteenth amended Chapter 13 plan. That same month, the bankruptcy court entered an order dismissing the case with prejudice for 180 days and denying confirmation of the fourteenth amended Chapter 13 plan, finding the plan was unconfirmable due to calculation errors. Complainant appealed the bankruptcy court’s order to the district court.

In February 2016 the Complainant’s appeal was dismissed because of her failure to timely file the designation of items for the record or statement of the issues. Complainant filed in the district court multiple motions seeking various types of relief, and the Subject Judge denied the motions without prejudice and directed the bankruptcy court to hold further proceedings. In November 2016 Complainant filed a motion to reopen the case. The next month, she filed a brief arguing, among other things, that her case was dismissed in violation of 11 U.S.C. § 1307(c)(5), which provides in part that a court may dismiss a Chapter 13 case for cause, including “denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan.”

In March 2017 the Subject Judge granted the motion to reopen the case. After that, Complainant filed motions to reinstate the bankruptcy stay, which the Subject Judge

denied. In September 2017 Complainant filed two emergency motions to expedite a decision in the case. In January 2018 the Subject Judge entered an order dismissing the appeal with prejudice, stating that she agreed with the bankruptcy court's legal conclusions and was not persuaded that the court made any clear mistakes with respect to its factual findings. Complainant filed a motion for reconsideration in which she again argued that her case was dismissed in violation of § 1307(c)(5), and the Subject Judge denied the motion.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant complains that the Subject Judge dismissed the appeal after 13 months, and she alleges that the Subject Judge failed to base her decision on case law or the Bankruptcy Code, specifically 11 U.S.C. § 1307(c)(5). She alleges that the Subject Judge acted with an improper motive in delaying the case. Complainant also alleges that the Subject Judge treated her in a demonstrably egregious and hostile manner when the Subject Judge left her a "very hostile message on her voice mail stating never to call again about the Appellate case."

Complainant alleges that the Subject Judge was prejudiced against Complainant because she: (1) called to inquire about when a decision would be made; (2) filed two motions to expedite a decision; and (3) filed an appeal challenging the bankruptcy court's decision. Finally, Complainant states that she believes the Subject Judge favored the bankruptcy judge and did not read or consider Complainant's brief because the Subject Judge did not reverse the bankruptcy judge's ruling pursuant to § 1307(c)(5).

### 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, and orders entered in Complainant's appeal, 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 acted with an illicit or improper motive, treated Complainant in a demonstrably egregious and hostile manner, was biased or prejudiced against Complainant or in favor of the bankruptcy judge, 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**.

A handwritten signature in black ink, appearing to read "J. L. Carter", written over a horizontal line.

Chief Judge