

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

SEP 18 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-18-90091 through 11-18-90093**

**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 Judge \_\_\_\_\_ 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 Judge \_\_\_\_\_ (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 January 2017 Complainant filed an employment discrimination complaint against two companies, \_\_\_\_\_ and \_\_\_\_\_ (“\_\_\_\_\_”). In April 2017 \_\_\_\_\_ filed a motion to dismiss, and in August 2017 Judge \_\_\_\_\_ issued a report, recommendation, and order in which he, among other things, recommended that \_\_\_\_\_ motion to dismiss be granted. Complainant then filed objections, as well as a motion for summary judgment. In January 2018 Judge \_\_\_\_\_ issued an order adopting the report and recommendation and directed the clerk to terminate \_\_\_\_\_ as a party.

Meanwhile, at a discovery hearing in November 2017, Judge \_\_\_\_\_ found that Complainant did not offer justification for her failure to respond to \_\_\_\_\_ discovery requests. Judge \_\_\_\_\_ ordered Complainant to respond to discovery requests and cautioned her that failure to respond to communications from \_\_\_\_\_ or to provide court-ordered discovery could result in sanctions, including the dismissal of the case. After that, \_\_\_\_\_ filed a motion to dismiss the case.

In late January 2018 Judge \_\_\_\_\_ issued a report, recommendation, and order in which he recommended that: (1) \_\_\_\_\_ motion to dismiss be granted; and (2)

Complainant's motion for summary judgment be denied as moot. Judge \_\_\_\_\_ found that dismissal with prejudice was appropriate because Complainant, without justification, failed to respond to discovery requests and failed to comply with the court's order to provide discovery responses. In February 2018 Judge \_\_\_\_\_ adopted the report and recommendation, granted \_\_\_\_\_ motion to dismiss, and denied Complainant's motion for summary judgment as moot.

### Previous Complaint

In November 2017 Complainant filed a previous Complaint of Judicial Misconduct or Disability pertaining to the one of the Subject Judge's actions in her case. In April 2018 Judge \_\_\_\_\_ dismissed that Complaint on the ground that it was merits-related and based on insufficient evidence. Complainant did not file a petition for review, and that complaint matter is closed.

### Present Complaint

In her present Complaint of Judicial Misconduct or Disability, Complainant complains that Judges \_\_\_\_\_ and \_\_\_\_\_ ruled on her case before action had been taken on the previous Complaint of Judicial Misconduct or Disability she had filed. She also appears to take issue with Judges \_\_\_\_\_ and \_\_\_\_\_ reports and orders entered in her case. She states that she "did not receive [her] day in court, as requested, and by law." Finally, Complainant notes that Judge \_\_\_\_\_ dismissed her previous Complaint of Judicial Misconduct or Disability, and she alleges that Judge \_\_\_\_\_ violated her constitutional rights and civil liberties. 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:

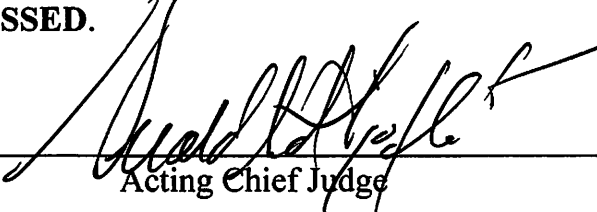
Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations "[d]irectly related to the merits of a decision or procedural ruling." This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint 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.

In addition, the “Commentary on Rule 3” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint—even though it does not concern the judge’s rulings in Article III litigation.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, rulings, reports, and orders entered in Complainant’s case and previous Complaint of Judicial Misconduct or Disability matter, the allegations are directly related to the merits of the Subject Judges’ 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 Judges 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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Acting Chief Judge