

FEB 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90102**

**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 March 2008 a company filed a lawsuit raising various claims against three defendants. The next month, the Subject Judge granted a motion to compel arbitration that the defendants had filed, and ordered the plaintiff and two defendants to arbitrate the claims. The order noted that the third defendant, \_\_\_\_\_, was not included in the arbitration proceedings. In March 2011 the plaintiff filed a Motion to Confirm Arbitration Award, noting that the arbitrator had awarded it a judgment against two defendants in an amount over \$500,000. In May 2011 the Subject Judge granted the motion, confirmed the arbitration award, and entered judgment in favor of the plaintiff and against two defendants. The Subject Judge noted that it did not appear that the plaintiff had pursued its claims against \_\_\_\_\_.

After that, Complainant entered a notice of appearance as attorney for the plaintiff. In July 2011 the plaintiff, through Complainant, filed a Writ of Execution seeking to collect the judgment from all three defendants, including \_\_\_\_\_. Almost one year later, the plaintiff, through Complainant, filed a Motion to Compel Post-Judgment Discovery as to Defendant \_\_\_\_\_, seeking an order compelling \_\_\_\_\_ to respond to post-judgment interrogatories the plaintiff had served on him.

In September 2012 the Subject Judge denied the motion to compel and ordered the plaintiff, Complainant, and another attorney to show cause as to why their actions had not violated Federal Rules of Civil Procedure 11(b)(1)-(3) and 26(g)(1)(B)(i)-(iii) and why

they should not be sanctioned. In the order, the Subject Judge noted, among other things, that the plaintiff falsely represented in the application for a writ of execution and motion to compel discovery that a judgment had been entered against \_\_\_\_\_. The order stated that the plaintiff's attorneys might be subject to discipline for violating various provisions of the Model Rules of Professional Conduct.

After that, the plaintiff filed a "Motion to Correct Clerical Mistake," seeking to remove \_\_\_\_\_ name from the Writ of Execution, and a notice that it was withdrawing the motion to compel discovery as to \_\_\_\_\_. Complainant and the other attorney then filed a response to the show cause order, arguing they had relied on a clerical error in failing to discover that \_\_\_\_\_ name should not have been included in the post-judgment filings.

In October 2012 the Subject Judge entered an order formally reprimanding Complainant under Rule 11 and directing the clerk to send a copy of the order to the state bar so that it could take any action deemed appropriate. With respect to Complainant, the Subject Judge found that he filed facially improper and "objectively frivolous" documents, he failed to satisfy his duty to reasonably inquire into the facts and law in connection with the writ of execution and the motion to compel, he acted with deliberate indifference to obvious facts, and his conduct was "akin to contempt." The Subject Judge determined that Complainant's conduct was not egregious enough to warrant serious, monetary sanctions, but that it "should not go unpunished." Complainant appealed the order, and this Court affirmed, holding that the district court did not abuse its discretion in sanctioning Complainant.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge treated him in a demonstrably egregious or hostile manner by issuing a Rule 11 reprimand against him and referring the matter to the state bar for possible discipline, when the Subject Judge knew or should have known that no state rule of professional conduct had been violated.

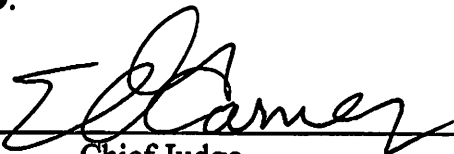
### Discussion

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 findings and order reprimanding Complainant, 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, he provides no credible facts or evidence in support of his allegations that the Subject Judge treated him in a demonstrably egregious and hostile manner 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