

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 10 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90113**

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

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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.

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**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 December 2015 Complainant filed in state court a *pro se* lawsuit against two defendants alleging a breach of contract and a breach of fiduciary duty, and the defendants removed the case to federal court in February 2016. In March 2016 Complainant moved for entry of default against the defendants. After the defendants filed an answer, the Subject Judge denied as moot the motion for entry of default. Later in March 2016, the defendants filed a motion to dismiss or in the alternative for a more definite statement, and on the same day, the Subject Judge granted the alternative motion for more definite statement and ordered Complainant to file an amended complaint. In April 2016 the Subject Judge issued a Scheduling Order providing in part that discovery was to be completed by August 31, 2016.

The next month, Complainant filed a motion for leave to file an amended complaint, which the Subject Judge granted. After that, Complainant filed, among other things, an amended complaint and a renewed motion for summary judgment. In June 2016 he filed multiple motions to compel initial disclosures, and the defendants filed an amended motion to dismiss. On July 8, 2016, Complainant filed “Interrogatories and Admissions and Requests for Production.” On the same day, the Subject Judge issued an order suspending the parties’ discovery obligations until the court ruled on the pending motion for summary judgment and motion to dismiss. In August 2016 Complainant filed a motion in which he inquired about the “prolonged delay” in the case. Also in August

2016 an attorney for the defendants filed a motion to withdraw, which the Subject Judge granted.

The record shows that in March 2016 Complainant filed a pro se lawsuit against multiple defendants alleging breach of contract and breach of fiduciary duty. The next month, the defendants filed a motion to dismiss or in the alternative for a more definite statement, and the same day, the Subject Judge granted the alternative motion for more definite statement and ordered Complainant to file an amended complaint. In May 2016 Complainant filed an amended complaint and he moved to dismiss one of the defendants. The Subject Judge granted the motion to dismiss the defendant. Later that month, the Subject Judge issued a Scheduling Order providing in part that discovery was to be completed by September 30, 2016.

After that, the defendants filed an amended motion to dismiss. Complainant then filed multiple motions and notices, as well as another amended complaint. On July 8, 2016, he filed "Interrogatories and Admissions and Requests for Production," and on the same day, the Subject Judge issued an order suspending the parties' discovery obligations until the court ruled on the pending motion to dismiss. The next month, an attorney for the defendants filed a motion to withdraw, which the Subject Judge granted.

The record shows that in July 2016 Complainant filed a lawsuit against multiple defendants raising various arguments. In September 2016 the Subject Judge entered an order directing the clerk to reassign the case to a district judge, and the case was reassigned. Later that month, the district judge dismissed the case for failure to state a claim on which relief could be granted. Complainant has filed a fourth case in the district court, and on the same day the case was filed, the Subject Judge ordered that the case be reassigned to a district judge.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in "Intentional and Habitual Delay" in his cases. He states that it is "not a mere coincidence" that Complainant's four cases "have all been arbitrarily and even intentionally 'stalled' pursuant to the court's vague and nebulous" order staying discovery in two of the cases "even as they are separate matters each with its own unique case number and unique set of facts . . . ." In a third case, Complainant states that the court has stayed all activity in the case and is "sitting on the complaint." He notes that another case that was transferred to another division "sits dormant."

Complainant alleges that "there has been a 'blanket delay/ order' imposed across" three cases "pursuant to an identical order, which constitutes a 'habitual Pattern of behavior.'" He disputes that the court would need additional time due to the "complexities" of the cases. Complainant states, "Regardless, it does not require months

and months and months of deliberation by the court in order to sort through a simple breach of contract case, and if it does then we need to reassign my cases to a judge that is actually competent in these areas of contract and tort law.”

Complainant contends that the Subject Judge has “shown a disregard” toward the agreement of the parties as to the timing of discovery in two of the cases, and he alleges that the Subject Judge has disrespected him due to his pro se status. Complainant asserts that the delay has benefitted the defense “immensely.” He complains that the court has not responded to his filings and asserts that the court has been “sloppy and inattentive.” Complainant states that the timing of the court’s orders staying discovery in two cases is “highly suspect,” he notes that the defense did not take any action to stop discovery, and he suggests that the content of his interrogatories led to the court delaying discovery. Complainant also states that “the court has grown ‘Disabled,’” as it has shown that it cannot perform its sworn duties. Finally, he asserts that the Subject Judge’s “court obviously has a major bias toward pro- se litigants.”

### 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 the cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge intentionally delayed Complainant’s cases, engaged in habitual delay in a significant number of unrelated cases, was biased against Complainant or in favor of the defendants, is biased against pro se litigants, suffers from a disability, 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