

JAN 26 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90115**

**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 July 2015 Complainant filed a lawsuit against a company raising claims of race discrimination, and she moved to proceed in forma pauperis (IFP). The Subject Judge denied the IFP motion and dismissed the case for failure to state a claim on which relief could be granted. Complainant then filed another IFP motion and a “Motion to Refer Case to Volunteer Lawyers Project,” and the Subject Judge denied those motions. In September 2015 Complainant filed an amended complaint. A couple of months later, the Subject Judge entered an order dismissing the complaint for failure to state a claim on which relief could be granted. The order specifically dismissed Complainant’s retaliation and 42 U.S.C. § 1983 claims with prejudice, and gave her the opportunity to amend her complaint with respect to claims under Title VII or 42 U.S.C. § 1981.

After that, Complainant filed another “Motion to Refer Case to Volunteer Lawyers Project.” The Subject Judge then entered an order dismissing the case for failure to prosecute due to Complainant’s failure to file an amended complaint. Complainant filed a “Petition for Writ of Certiorari,” which the Subject Judge denied. In February 2016 Complainant filed another amended complaint. The Subject Judge ordered the document stricken, denied it to the extent it was a motion to proceed IFP on appeal, and stated that no further filings would be accepted in the closed case. Complainant then filed a notice of appeal and a motion to proceed IFP on appeal, and the Subject Judge denied the IFP

motion and reiterated that no further filings would be accepted. In October 2016 this Court clerically dismissed Complainant's appeal for want of prosecution.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge has "not adhered" to the law, the United States Constitution, and the state "judicial code of conduct." Complainant appears to take issue with the Subject Judge's orders, states that the denial of her motion to proceed IFP was unfair, and asserts that the Subject Judge's statement that the court would not accept further filings was unconstitutional. Complainant 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.

All of Complainant's allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the case, and they are directly related to the merits of the Subject Judge's decisions or procedural rulings.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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