

APR 11 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-16-90135 and 11-16-90136**

**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 \_\_\_\_\_, 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 \_\_\_\_\_ and United States District 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 September 2016 Complainant filed a lawsuit against a state and other defendants, alleging that he was given contaminated food while incarcerated which caused him to develop a disability. He also filed a motion to proceed in forma pauperis, which Judge \_\_\_\_\_ granted. In October 2016 Judge \_\_\_\_\_ issued a report recommending that the complaint be dismissed as frivolous, for failure to state a claim, and for seeking monetary relief from defendants who were immune from it.

Complainant filed objections to report in which he argued that the court had committed “clerk’s fraud” against him by transferring the case to a magistrate judge from a different division of the district court in order to cover up the state’s liability for his disability. In January 2017 Judge \_\_\_\_\_ adopted Judge \_\_\_\_\_ report and recommendation and dismissed the complaint.

**Complaint**

In his Complaint of Judicial Misconduct or Disability, Complainant states that the district court “committed Clerk’s fraud” against him to “deface” his lawsuit and “rob” him of his disability claim against the state “by sending and enlisting a fraudulent branch” of the district court. He states that “[t]wo different branches” of the district court

“are being used together to deface [his] claim by commit[t]ing clerk’s fraud” to deny his “lawsuit and claim.” Finally, Complainant states that the district has made his case “fraudulent.”

### 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 Judges’ official actions, findings, report, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judges committed fraud 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