

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

APR 04 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90049**

**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 September 2013 Complainant filed an amended  
complaint against a corporation raising four claims, including a claim under the Fair  
Credit Reporting Act. The parties later consented to have a magistrate judge conduct all  
proceedings in the case. In May 2014 the defendant filed an answer to the amended  
complaint and asserted a counterclaim against Complainant for unpaid fees. In June 2014  
the defendant filed a motion for entry of a default judgment as to its counterclaim, as well  
as a motion for summary judgment.

The next month, Complainant filed a motion for sanctions and to dismiss the  
motion for default and motion for summary judgment, generally alleging that the  
defendant had committed fraud and engaged in perjury in connection with an affidavit  
submitted in support of its motion for summary judgment. Complainant also filed a  
motion for summary judgment. In March 2015 the Subject Judge entered an order and  
opinion that, among other things, granted the defendant’s motion for summary judgment  
and motion for entry of a default judgment and denied Complainant’s motion for  
summary judgment and motion for sanctions. On the motion for sanctions, the Subject  
Judge found that Complainant had failed to establish that the defendant had engaged in  
fraud or committed perjury.

Several months later, Complainant filed a motion for a protective order and for sanctions against the defendant and its counsel. Complainant stated that: (1) certain documents filed by the defendant displayed her Social Security number and other personally identifying information; (2) she believed the defendant and its counsel had intentionally displayed that information; and (3) the defendant and its counsel had “constantly attempted” to manipulate Complainant and the court during the litigation. Complainant also filed a motion to vacate the judgment and for sanctions against the defendant and its counsel, alleging that they had engaged in fraud upon the court. The defendant filed responses to Complainant’s motions, noting that her Social Security number “was inadvertently not redacted” in certain exhibits and that it did not oppose having that information redacted, but arguing that the motions should be denied for various reasons.

In February 2016 the Subject Judge entered an order: (1) granting Complainant’s motion for a protective order; (2) directing the defendant to file its motion for summary judgment and exhibits with all personally identifying information redacted; and (3) directing defendant’s counsel to pay Complainant sanctions in the amount of \$250 within 30 days for failing to redact her Social Security number. The order denied Complainant’s motion to vacate the judgment, again finding that she failed to establish that the defendant committed a fraud upon the court.

In April 2016 Complainant filed a motion for sanctions against the defendant and its counsel, alleging that they had failed to comply with the court’s order by continuing to display personal identifiers in certain exhibits and by failing to pay the sanctions within 30 days. The defendant filed a response in which it argued that Complainant had waived the protection of Fed. R. Civ. P. 5.2(a) by disclosing on the record the personal information at issue and that it had sent her \$250 in a timely manner. In October 2016 the Subject Judge denied the motion for sanctions, generally finding that the defendant and its counsel had not violated the court’s earlier order.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that her Complaint “arises primarily from [the Subject Judge’s] inability to instruct the Defendant[s] attorney and or hold him accountable for his nefarious behavior towards [Complainant] during court proceedings.” Complainant alleges that the Subject Judge: (1) “allowed repetitive conduct” by the defendant’s attorney “that was prejudicial to [Complainant’s] effective administration of business with the court”; (2) “misinterpreted” her motions and evidence and “disregarded counsel’s constant misrepresentation of evidence”; (3) failed to “supervise” the defendant’s counsel; and (4) ignored or failed to sufficiently respond to the defendant and its attorney’s inappropriate and illegal behavior.

Complainant also asserts that the Subject Judge made statements related to the “forgetfulness” of “\_\_\_\_\_,” who appears to be an employee of the defendant. She contends that the statements had the “appearance of bias” and that the Subject Judge seemed to be “mak[ing] excuses” for that person’s mental state. In conclusion, Complainant alleges that the Subject Judge allowed the defendant and its attorney “to manipulate, misrepresent, commit fraud and use trickery during this proceeding.” She attached a document 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, opinion, and orders entered in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, she provides no credible facts or evidence in support of her allegations that the Subject Judge was biased, allowed the defendant and its counsel to engage in misconduct, or engaged in misconduct himself.

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