

APR 17 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90091**

**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 January 2017 Complainant filed a pro se employment  
discrimination complaint against two companies, \_\_\_\_\_ and \_\_\_\_\_. In April  
2017 the Subject Judge issued Guidelines for Discovery and Motion Practice, generally  
describing the discovery process. Also in April 2017, \_\_\_\_\_ filed an answer to the  
complaint, and \_\_\_\_\_ filed a motion to dismiss and a motion to stay discovery  
pending resolution of its motion to dismiss. In June 2017 the defendants filed a proposed  
joint preliminary report and discovery plan in which they stated that they had been unable  
to contact Complainant despite multiple attempts.

A couple of months later, the Subject Judge issued a report, recommendation, and  
order, which: (1) granted in part \_\_\_\_\_ motion to stay discovery and stayed  
discovery with respect to \_\_\_\_\_ only; and (2) recommended that \_\_\_\_\_ motion  
to dismiss be granted. The Subject Judge also issued a scheduling order setting out  
certain deadlines. Complainant filed objections to the Subject Judge's report,  
recommendation, and order. She then filed a preliminary report and discovery plan and a  
motion for summary judgment. The district judge later issued an order adopting the  
Subject Judge's report and recommendation and directed the clerk to terminate  
\_\_\_\_\_ as a party.

Meanwhile, in November 2017 the Subject Judge entered an order noting that \_\_\_\_\_ had requested a conference call with the court to address Complainant's refusal to respond to its discovery requests, and that the Subject Judge's courtroom deputy clerk had unsuccessfully attempted to contact Complainant to schedule the conference call. The Subject Judge ordered Complainant and counsel for \_\_\_\_\_ to appear in person for a conference at the courthouse. At a discovery hearing in November 2017 where Complainant and \_\_\_\_\_, on behalf of \_\_\_\_\_, appeared, the Subject Judge found that Complainant did not offer justification for her failure to respond to \_\_\_\_\_ discovery requests. The Subject Judge ordered Complainant to respond to \_\_\_\_\_ discovery requests and cautioned her that failure to respond to communications from \_\_\_\_\_ or to provide court-ordered discovery could result in sanctions, including the dismissal of the case.

After that, \_\_\_\_\_ filed a motion to dismiss the case and a motion to stay discovery. In late January 2018 the Subject Judge issued a report, recommendation, and order in which he: (1) granted \_\_\_\_\_ motion to stay discovery; (2) recommended that \_\_\_\_\_ motion to dismiss be granted; and (3) recommended that Complainant's motion for summary judgment be denied as moot. The Subject Judge found that dismissal with prejudice was appropriate because Complainant, without justification, failed to respond to discovery requests and failed to comply with the court's order to provide discovery responses. In February 2018 the district judge adopted the report and recommendation, granted \_\_\_\_\_ motion to dismiss, and denied Complainant's motion for summary judgment.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that she did not respond to discovery requests from \_\_\_\_\_ for various reasons, including because she was "informed by the court any paperwork that I have to respond to will be sent by them." Complainant describes her responses to the Subject Judge's questions at the November 2017 discovery hearing, and states that the Subject Judge told her that if she did not respond to \_\_\_\_\_ discovery requests, the Subject Judge would "push" \_\_\_\_\_ to file a motion to dismiss the case and the Subject Judge would grant the motion. She alleges that the Subject Judge stated, "' \_\_\_\_\_ and I can go into my chambers right now, and start the process to dismiss this case. Do you hear me [Complainant]?'"

Complainant alleges that the Subject Judge: (1) violated her constitutional and civil rights by not allowing her to have her "day in court" with \_\_\_\_\_; (2) "violated a breach in Confidentiality"; and (3) violated "other specific mandatory standards of Judicial Conduct, such as those pertaining to restrictions on outside income, and requirements for financial disclosure." She 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, orders, reports, and recommendations in the case, 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 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