

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 20 2018

David J. Smith  
Clerk

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

**Judicial Complaint No. 11-18-90028**

**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 November 2014 Complainant filed in a \_\_\_\_\_ federal court a civil action against various defendants, raising claims of false imprisonment, assault, battery, and malicious prosecution. The case was eventually transferred to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_. In September 2015 the Subject Judge entered an order generally finding that Complainant failed to state a claim and directing him to file an amended complaint. A couple of months later, Complainant filed an amended complaint, raising claims of battery and malicious prosecution. After that, he filed a motion for leave to file a second amended complaint.

In December 2015 the Subject Judge issued a report recommending that: (1) only Complainant’s malicious prosecution claim be allowed to proceed against certain defendants; (2) his remaining claims be dismissed; and (3) his motion to amend his complaint be denied. Over Complainant’s objections, the district judge adopted the report and recommendation. After various proceedings, the remaining defendants filed a motion for judgment on the pleadings, and Complainant filed a response.

In September 2016 the Subject Judge issued an order and final report recommending that the defendants’ motion for judgment on the pleadings be granted. The Subject Judge, among other things: (1) found that Complainant’s federal malicious prosecution claim failed because there was at least arguable probable cause for his arrest;

(2) found that the claim also failed when the allegations were considered separately against each defendant; and (3) stated that, to the extent Complainant raised a state law malicious prosecution claim, the court should decline to exercise supplemental jurisdiction over it. In November 2016 a district judge issued an order adopting the report and recommendation, granting the defendants' motion for judgment on the pleadings, dismissing Complainant's complaint and amended complaint, and denying a motion for sanctions that Complainant had filed.

After that, Complainant filed objections to the Subject Judge's report and recommendation and a motion to vacate the order adopting the report and recommendation. The district judge denied Complainant's motion to vacate, finding that his objections were untimely. Complainant then filed a motion to amend the order denying his motion to vacate, which the district judge denied. Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution. In August 2017, Complainant filed a Fed. R. Civ. P. 60(b) motion for relief from judgment, which a district judge denied.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct in his September 2016 report and recommendation by deliberately omitting the merits of Complainant's "side of the case" and multiple arguments that he made. He attached various documents to his Complaint.

### Discussion

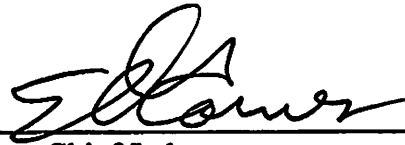
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[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 September 2016 report and recommendation, the allegations are directly related

to the merits of the Subject Judge's decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge engaged in misconduct by deliberately omitting arguments from his report and recommendation.

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