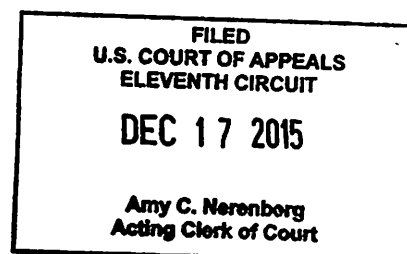


**CONFIDENTIAL**

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

**Judicial Complaint No. 11-15-90138**



**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 March 2015 Complainant filed a lawsuit against her former employer and invoked diversity jurisdiction. A few days later, the Subject Judge ordered that the complaint be stricken for failure to adequately allege the parties’ citizenship for purposes of establishing diversity jurisdiction. Complainant then filed an amended complaint, raising claims under two state statutes. She filed a motion for default judgment and on April 2, 2015, the Subject Judge denied it, finding that there was no indication that the amended complaint had been served on the defendant. On the same day, the defendant moved to dismiss the amended complaint for lack of subject matter jurisdiction.

Complainant then filed a motion for relief from the Subject Judge’s April 2 order. On April 21, 2015, the Subject Judge denied that motion, finding that there were no grounds for default because the defendant had responded to the amended complaint by filing a motion to dismiss. Complainant filed a motion to vacate the Subject Judge’s April 21 order and to sanction the defendant’s attorney. On April 28, 2015, the Subject Judge denied the motion, finding that there were no grounds for default or sanctions because the defendant timely responded to the amended complaint. Complainant then filed a motion to vacate that order, which the Subject Judge denied.

In May 2015 the Subject Judge granted in part the defendant’s motion to dismiss, finding that the amended complaint failed to invoke federal question jurisdiction and

failed to sufficiently allege a basis for diversity jurisdiction. The Subject Judge dismissed the amended complaint but gave Complainant 14 days to file a third amended complaint. After that, Complainant filed a notice of appeal and a “Motion to Quash” in which she argued that the dismissal of her amended complaint with prejudice was improper. The Subject Judge denied the Motion to Quash as frivolous, noting that Complainant’s complaint was not dismissed with prejudice. The Subject Judge also provided Complainant with one last opportunity to file an amended complaint by July 8, 2015, and cautioned her that a failure to do so would result in dismissal of the case without further notice.

In September 2015 the Subject Judge dismissed the case because Complainant had failed to file an amended complaint as directed. After that, Complainant filed a motion to recuse the Subject Judge, generally alleging that he was biased, had personal knowledge of disputed facts, and had violated her rights. The Subject Judge denied the motion to recuse as moot and noted that, in any event, the motion was legally and factually insufficient and it provided no valid basis for recusal or disqualification. Complainant filed a motion to vacate two of the Subject Judge’s orders due to “personal bias and prejudice, and personal knowledge of disputed evidentiary facts,” and the Subject Judge denied that motion.

#### Earlier Complaint

Complainant filed an earlier Complaint of Judicial Misconduct or Disability against the Subject Judge in which she raised allegations concerning his conduct in the case. In August 2015 that Complaint was dismissed as merits-related and based on allegations lacking sufficient evidence. That Complaint matter is closed.

#### Present Complaint

In her present Complaint of Judicial Misconduct or Disability, Complainant states that her earlier Complaint of Judicial Misconduct or Disability “was in direct conflict of personal bias, personal knowledge of disputed evidentiary facts concerning this proceedings [sic], and harassment; in addition, [the Subject Judge] did not recuse himself.” Complainant states that the Subject Judge did not recuse himself in the case even though his impartiality was questioned. She asserts that the Subject Judge “violated [her] personal liberties and/or has wantonly refused to provide the due process and equal protection to all litigants before the court or has behaved in a manner inconsistent with that which is needed for full, fair, impartial hearings.”

Complainant then discusses the merits of her lawsuit, and she asserts that the Subject Judge “had personal knowledge of the disputed evidentiary facts concerning unlawful employment by showing an unfair employment practice by [the defendant] was sufficient to warrant injunctive relief, attorney fees and cost[s].” Finally, Complainant

states that she has “good reason to believe” that the Subject Judge cannot hear her case in a fair and impartial manner. She attached 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, and orders entered in the case, including his failure to recuse, 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, not impartial, 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