

AUG 25 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90049**

**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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental  
statement. The filing of the supplemental statement is approved. See 11th Cir. JCDR  
6.7.

**Background**

The record shows that in November 2015 Complainant filed a prisoner civil rights  
action against two defendants and a motion for proceed in forma pauperis (IFP). The  
next month, the Subject Judge granted the IFP motion, but determined that Complainant’s  
allegations were “extremely vague and confusing” and directed him to file an amended  
complaint. In January 2016 Complainant filed an amended complaint alleging that he  
had been denied access to the courts, and he also filed an “Emergency Motion for  
Preliminary Injunction.” After that, Complainant filed another amended complaint, a  
“Motion to Issue and Serve Defendants with Complaint and Summons,” and a “Motion to  
Waive Usual Procedures” in which he requested a hearing on his motion for a  
preliminary injunction.

In May 2016 the Subject Judge issued a report recommending that the complaint  
be dismissed for failure to state a claim and that Complainant’s motions be denied as  
moot, generally finding that Complainant was not entitled to relief on his claims. Over  
Complainant’s objections, the district judge adopted the Subject Judge’s report and  
recommendation, and the case was dismissed.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge “refused to require service of the civil action upon all defendants.” Complainant states that the fact that the defendants are “high political state officials should not delay and/or prevent them from being answerable . . . .” He asserts that the Subject Judge’s actions are prejudicial to the effective and expeditious administration of the business of the courts.

## Supplement

In his supplemental statement, Complainant asserts that the Subject Judge violated “Rule 3(h)(1)(G),” which provides that cognizable misconduct includes “retaliating against complainants, witnesses, or others for their participation in this complaint process.”

## 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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, report, and orders entered in the case, including any perceived delay, 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 claim that the Subject Judge retaliated against anyone for participating in the Complaint of Judicial Misconduct or Disability process 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