

APR 11 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90130**

**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 June 2016 Complainant filed a lawsuit against multiple  
defendants, including a foreign corporation. He then filed a completed “AO 440” form,  
“Summons in a Civil Action,” as to each of the defendants. One of the defendants filed  
an unopposed motion to stay the proceedings pending a decision on whether the case  
would be transferred, and the Subject Judge granted the motion. In August 2016  
Complainant filed a motion to partially lift the stay in which he noted his service of  
process had been rejected as to one of the defendants, and he requested that the stay be  
lifted to enable to him to accomplish service on the defendant. On the same day, he filed  
a motion for a 90-day extension of time to serve the defendant.

On August 29, 2016, the Subject Judge entered an order granting the construed  
motion for an exception to the stay and granting in part the motion for an extension of  
time, providing Complainant until September 23, 2016 to file proof of service. In  
September 2016 Complainant filed a notice stating that he was unable to comply with the  
court’s order because the defendant’s registered agent had rejected service, and  
withdrawing his consent to a stay in the matter. The Subject Judge construed the notice  
as a motion to lift the stay and denied it. In early October 2016, an order was entered  
transferring the case to another court. The next day, Complainant filed a notice stating  
that the AO 440 form was not suitable for serving process on a foreign corporation and  
requesting that the court create a new version of the form to be used for that purpose.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “repeatedly exhibited incompetence, negligence and conduct prejudicial to the administration of justice” in connection with the AO 440 form. Complainant states that, under the Subject Judge’s leadership, the district court provided him with the AO 440 form, which was not suitable for serving process on the defendant, and the court did not provide him with instructions on how to fill out the form. He complains that he received no response to his notice to the court that the form was inadequate, which he states was “error.” He also states that the Subject Judge “should develop a variant of the Form AO 440” and instructions for filling out the form, and that by failing to do so, he violated multiple canons of the Code of Conduct for United States Judges and provisions of Fed. R. Civ. P. 4.

Complainant then alleges that the Subject Judge “acted incompetently and negligently” in connection with the existing form and the failure to develop a new form. He complains that the Subject Judge did not analyze the current form to determine that it was deficient, and did not incorporate the requirements of a certain Supreme Court case into the form. Complainant states that he has not been able to serve process on one of the defendants due to what he believes is the Subject Judge’s incompetence, which constituted a violation of Complainant’s rights. He states that the Subject Judge in his orders did not: (1) describe the facts of the case in sufficient detail; (2) analyze the facts “with sufficient thoroughness and diligence”; (3) provide a written rationale; and (4) apply “a totality of the circumstances test to the facts” of the case. He also takes issue with the Subject Judge’s order granting him an extension of “less than a month” when he had requested a 90-day extension. 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 official actions, findings, rulings, 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, he provides no credible facts or evidence in support of his allegations that the Subject Judge was incompetent, was negligent, violated the Code of Conduct for United States Judges, 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**.

A handwritten signature in black ink, appearing to read "E. L. ...", is written over a horizontal line.

Chief Judge