

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

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

NOV 01 2017

David J. Smith  
Clerk

**Judicial Complaint No. 11-17-90047**

**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 July 2015 Complainant filed a lawsuit raising claims of race discrimination against a company, and she moved to proceed in forma pauperis (IFP). The Subject Judge denied the IFP motion and dismissed the case for failure to state a claim on which relief could be granted. Complainant then filed another IFP motion and a motion to refer the case to the “Volunteer Lawyers Project,” and the Subject Judge denied those motions. In September 2015 Complainant filed an amended complaint. A couple of months later, the Subject Judge entered an order dismissing the complaint for failure to state a claim on which relief could be granted. The order specifically dismissed Complainant’s retaliation and 42 U.S.C. § 1983 claims with prejudice, and gave her the opportunity to amend her complaint with respect to claims under Title VII or 42 U.S.C. § 1981.

After that, Complainant filed another motion to refer the case to the Volunteer Lawyers Project. The Subject Judge then entered an order dismissing the case for failure to prosecute due to Complainant’s failure to file an amended complaint. Complainant filed a “Petition for Writ of Certiorari,” which the Subject Judge denied. In February 2016 Complainant filed another amended complaint. The Subject Judge ordered the document stricken, denied it to the extent it was a motion to proceed IFP on appeal, and stated that no further filings would be accepted in the closed case. Complainant then filed a notice of appeal and a motion to proceed IFP on appeal, and the Subject Judge denied the IFP motion. In April 2017 this Court dismissed Complainant’s appeal for lack of jurisdiction, but directed the district court clerk to docket her Petition for Writ of

Certiorari as a notice of appeal. Complainant later filed in the district court another motion to proceed IFP on appeal, which the Subject Judge denied.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge made “Unconstitutional” and “Illegal” rulings “based on” Canons 1 and 2 of the Code of Conduct for United States Judges and the Civil Rights Act of 1964. 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 findings 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 that Complainant challenges, she provides no credible facts or evidence in support of her allegations 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**.

  
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Chief Judge