

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

SEP 18 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-18-90058 and 11-18-90059**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against U.S. Magistrate Judge \_\_\_\_\_  
and U.S. District Judge \_\_\_\_\_ of 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 \_\_\_\_\_ and United States District Judge \_\_\_\_\_ (collectively, “the Subject Judges”), 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 her Complaint, she filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in January 2017 Complainant filed an employment discrimination complaint against two companies, \_\_\_\_\_ and \_\_\_\_\_ (“\_\_\_\_\_”). In April 2017 \_\_\_\_\_ filed a motion to dismiss and a motion to stay discovery pending resolution of its motion to dismiss. In August 2017 Judge \_\_\_\_\_ issued a report, recommendation, and order in which he, among other things, stayed discovery with respect to \_\_\_\_\_, and recommended that \_\_\_\_\_ motion to dismiss be granted. Complainant then filed objections, as well as a motion for summary judgment. In January 2018 Judge \_\_\_\_\_ issued an order adopting the report and recommendation and directed the clerk to terminate \_\_\_\_\_ as a party.

Meanwhile, in November 2017 Judge \_\_\_\_\_ ordered Complainant and counsel for \_\_\_\_\_ to appear in person for a conference to address Complainant’s refusal to respond to \_\_\_\_\_ discovery requests. At a discovery hearing where Complainant and \_\_\_\_\_, on behalf of \_\_\_\_\_, appeared, Judge \_\_\_\_\_ found that Complainant did not offer justification for her failure to respond to \_\_\_\_\_

discovery requests. Judge \_\_\_\_\_ ordered Complainant to respond to discovery requests and cautioned her that failure to respond to communications from \_\_\_\_\_ or to provide court-ordered discovery could result in sanctions, including the dismissal of the case.

After that, \_\_\_\_\_ filed a motion to dismiss the case and a motion to stay discovery. In late January 2018 Judge \_\_\_\_\_ issued a report, recommendation, and order in which he: (1) granted \_\_\_\_\_ motion to stay discovery; (2) recommended that \_\_\_\_\_ motion to dismiss be granted; and (3) recommended that Complainant's motion for summary judgment be denied as moot. Judge \_\_\_\_\_ found that dismissal with prejudice was appropriate because Complainant, without justification, failed to respond to discovery requests and failed to comply with the court's order to provide discovery responses. In February 2018 Judge \_\_\_\_\_ adopted the report and recommendation, granted \_\_\_\_\_ motion to dismiss, and denied Complainant's motion for summary judgment as moot.

The record also shows that in May 2018 Complainant filed an employment discrimination lawsuit against a company. Later that month, Judge \_\_\_\_\_ entered an order directing the clerk to transfer the case to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ because that district was where the alleged discrimination occurred and where the defendant was located. Complainant filed objections to the order. In June 2018 Judge \_\_\_\_\_ entered an order adopting Judge \_\_\_\_\_ order and directing the clerk to transfer the case.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant takes issue with the January 2018 order dismissing her case against \_\_\_\_\_, stating that Judge \_\_\_\_\_ "refused to hear" the case in violation of her constitutional and civil rights. She also complains about the dismissal of her case against \_\_\_\_\_ on the ground that she did not provide certain documents and did not properly file her motion for summary judgment, asserting that Judge \_\_\_\_\_ again violated her constitutional and civil rights.

Complainant then takes issue with certain factual statements Judge \_\_\_\_\_ made in his January 2018 order, and she alleges that he violated her constitutional and civil rights. Next, Complainant complains that the Subject Judges ruled on her case before action had been taken on an "appeal for Civil Rights & Liberties complaint" she had filed against one of the Subject Judges. Finally, she takes issue with certain actions taken by \_\_\_\_\_. She attached various documents to her Complaint.

## Supplement

In her supplemental statement, Complainant generally takes issue with the Subject Judges' orders transferring her second case to another district court. She also asserts that Judge \_\_\_\_\_ stated that her case was a criminal case, when it was a civil case. She attached various documents to her supplemental statement.

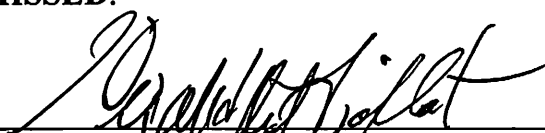
## Discussion

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 Judges’ official actions, findings, rulings, reports, and orders entered in Complainant’s cases, the allegations are directly related to the merits of the Subject Judges’ 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 Judges 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**.

  
\_\_\_\_\_  
Acting Chief Judge