

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 09 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-18-90168**

**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

Documents Complainant provided show that in 1982 he filed an employment discrimination lawsuit against two companies, and the case later was assigned to the Subject Judge. In 1986 the Subject Judge dismissed the case because Complainant failed to provide proof that he tendered the money he received as consideration for a release he had entered into with the defendants, and a judgment was entered dismissing the case “on the merits.” In August 1986 this Court affirmed the district court without opinion. Complainant later filed a motion to correct the judgment, and in 1991 the Subject Judge entered an order granting the motion and directing the clerk to reenter the judgment dismissing the action “without prejudice.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant complains that the Subject Judge entered an order directing Complainant to appear before the court despite that it had no “personal or geographical jurisdiction” over him. He asserts the Subject Judge failed to conduct a trial and “was scheming to dispense with” a trial “under secret deals worked out through . . . the Court’s former law clerk” and the previously assigned district judge.

Complainant then alleges the Subject Judge: (1) “refus[ed] to transfer the case” to another venue, which was “arbitrary and capricious as if he had some personal interest in

the outcome of this case”; (2) “worked on various other cases of the defendants” when he was a lawyer; (3) caused a notice to be posted stating that additional security was needed when Complainant appeared before the court, which constituted treatment that was “demonstrably prejudicial, biased, egregious and hostile”; (4) had “secret deals” with counsel for the defendants to avoid conducting a trial and providing Complainant with discovery; (5) gave “special treatment” to the defendants and their counsel; (6) issued an order and judgment without notice and a hearing in violation of the Federal Rules of Civil Procedure and Supreme Court precedent; and (7) refused to conduct further proceedings after dismissing the case without prejudice. Complainant also takes issue with the actions of individuals other than the Subject Judge.

### Discussion

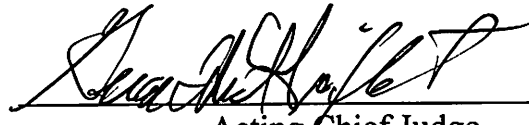
Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders 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 claims that the Subject Judge acted with an illicit or improper motive, was biased or prejudiced against him, treated him in a demonstrably egregious and hostile manner, had “secret deals” with counsel, gave special treatment to the defendants or their counsel, 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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Acting Chief Judge