

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 08 2019

David J. Smith  
Clerk

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

**Judicial Complaint No. 11-19-90007**

**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 obtained from the \_\_\_\_\_ website show that in June 2013 the \_\_\_\_\_ Bar filed a complaint against Complainant, who is an attorney, alleging that she engaged in misconduct during two state court cases, her daughter’s juvenile delinquency action and her civil action against a mortgage lender. Among other things, the complaint noted that Complainant accused the prosecutor in the delinquency action of racial bias and made various allegations of improper conduct and motives by the judge assigned to both cases.

Following a hearing, in April 2014 a referee issued a report recommending that Complainant be: (1) found guilty of misconduct warranting discipline; (2) suspended for 91 days until rehabilitation had been shown; and (3) before reinstatement, evaluated by a mental health professional. The referee found, among other things, that Complainant knowingly made misrepresentations during the two cases and knowingly or with callous indifference disparaged the prosecutor, the trial judge, and an appellate court. In March 2015 the Supreme Court of \_\_\_\_\_ approved the referee’s findings of fact and agreed that a rehabilitative suspension and a mental health evaluation were appropriate, but concluded that a suspension of six months was appropriate in light of the “serious rule violations.”

The record shows that in April 2018 Complainant filed in the district court a “Petition for Relief from De Facto Disbarment.” In the petition, Complainant, among other things: (1) stated she recently became aware that, in 2015, she had been “expelled”

from membership in the district court's bar; (2) contended that the expulsion violated her constitutional rights; and (3) generally argued that her suspension by the \_\_\_\_\_ Supreme Court was illegal, invalid, and unconstitutional. A few months later, the Subject Judge entered an order directing Complainant to file copies of all relevant documents from her disciplinary case and to file a supplemental brief. The order noted that the \_\_\_\_\_ Supreme Court suspended Complainant for six months in March 2015, and that the court's local rules required a reciprocal suspension unless Complainant petitioned to stay the reciprocal suspension within 21 days.

After additional proceedings, in October 2018 Complainant filed a brief challenging on several grounds her suspension by the \_\_\_\_\_ Supreme Court and the reciprocal discipline imposed by the district court. Among other things, Complainant argued that relevant records "corroborate conflicts of interest; abuses of power by public institutions and individuals; stereotypical assumptions about a Black citizen that White citizens who complain about the police or public officials would not have been subjected." After that, she filed a motion to compel discovery from the \_\_\_\_\_ Bar and a motion to seal certain exhibits.

In December 2018 the Subject Judge entered an order denying Complainant's Petition for Relief from De Facto Disbarment, as well as her motion to compel and motion to seal. The order initially summarized the factual findings announced by a referee and adopted by the \_\_\_\_\_ Supreme Court and described the disciplinary proceedings before the \_\_\_\_\_ Bar. Turning to Complainant's arguments, the Subject Judge stated that, to the extent she raised "patently frivolous arguments," for example, that the \_\_\_\_\_ Supreme Court lacked jurisdiction, her arguments were considered but not addressed.

The Subject Judge rejected Complainant's arguments that: (1) she was denied due process in the underlying proceedings; (2) there was a "clear infirmity" in the referee's finding that she was practicing law when she engaged in the misconduct; (3) the \_\_\_\_\_ Bar improperly shifted to her the burden to prove that the prosecutor and judge acted with a racial animus; (4) the referee improperly considered confidential records; and (5) the record lacked competent evidence that she lied about certain matters.

The order noted Complainant's allegations that: (1) the referee exhibited malice and rendered biased findings; and (2) the \_\_\_\_\_ Bar violated her First Amendment rights by disciplining her speech, manifested racial bias, and conspired with other agencies and branches of government to punish her due to her race. The Subject Judge determined that she failed to provide citations to support those allegations and that an independent review revealed no evidence of racial animus. In conclusion, the Subject Judge stated:

By continuing to disparage the prosecutor and the judge in [Complainant's daughter's] delinquency action (and by raising similar unsupported allegations against \_\_\_\_\_ Bar and the referee), [Complainant] persists in the misconduct for which she was disciplined and confirms the appropriateness of her rehabilitative suspension.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge's order denying her Petition for Relief from De Facto Disbarment. Among other things, Complainant alleges that the Subject Judge's order: (1) demonstrated bias, partiality, and discrimination; (2) "evinced an appalling lack of fairness, impartiality, and candor"; (3) punished her for her "content-based speech" and constituted "First Amendment retaliation"; (4) unlawfully deprived her of fundamental rights "with intent to inflict extreme emotional distress"; (5) deprived her of an opportunity to practice law without notice or an opportunity to be heard; (6) constituted an "abuse of power, conflicts of interests and disparate treatment"; and (7) violated the law. She also argues that the district court's local rule could not legally be used to disbar her.

Complainant asserts that the Subject Judge knew that in the underlying disciplinary proceedings she was denied due process, there was no probable cause, and the state court lacked jurisdiction. She takes issue with the Subject Judge's statement that she raised "patently frivolous arguments" about jurisdiction, asserting that the statement was "prejudicial and cast [her] in a poor light." Complainant alleges that the Subject Judge intentionally made false statements in his order, including statements about the dissemination of juvenile records and that she had been engaged in the practice of law.

Complainant takes issue with the Subject Judge's statement that he reviewed the record and found no evidence racial animus, asserting that the statement constituted viewpoint discrimination and contending that he "made an invalid assumption of proof" that her claims of racial animus were false. She states that the Subject Judge's "remarks articulate a policy that Complainant must subordinate her rights to Whites rather than redress them through the channels prescribe[d] by law." She also states, "Based on his remarks and his conclusion, a Black woman cannot complain about racial animus without being a liar and her legal rights are inferior to conduct by White state actors . . . whose conduct admittedly transgress the law and the code of ethics for their public office."

Complainant alleges that the Subject Judge improperly commented on the merits of a pending lawsuit by falsely stating that a lawsuit she had filed against the \_\_\_\_\_ Bar had been dismissed with prejudice and by sending a copy of his order to the \_\_\_\_\_ Bar. She also contends that the Subject Judge failed to send a copy of the order to the United States Attorney, which she contends is a violation of a local rule. Complainant asserts that the Subject Judge's comments undermined public confidence in

the integrity and impartiality of the judiciary, and she alleges that the Subject Judge violated multiple canons of the Code of Conduct for United States Judges. Finally, she 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, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an improper or illicit motive, intentionally made false statements, treated her in a demonstrably egregious and hostile manner, 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**.



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Chief Judge