

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
OCT 28 2019

**CONFIDENTIAL**

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

David J. Smith  
Clerk

**Judicial Complaint No. 11-19-90049**

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

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IN RE: The Complaint of \_\_\_\_\_ against United States District Judge  
\_\_\_\_\_ of the United States 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 an amended complaint against his former employer, alleging that the defendant had discriminated against him based on his race and disability. In November 2016 the Subject Judge issued a scheduling order, establishing a discovery deadline in May 2017. Complainant then filed a second amended complaint and a motion to extend the deposition deadlines. The Subject Judge entered an order granting the motion for extension, extending all unexpired deadlines for 60 days, and stating that no further extensions would be granted.

In July 2017 Complainant filed a “Motion to Termina[t]e Sanctions” in which he asserted that the defendant had withheld information. The defendant filed a motion to quash a subpoena Complainant had issued and a response to the motion to terminate sanctions. Complainant filed a second motion to terminate sanctions. In August 2017 the Subject Judge entered an order: (1) granting the defendant’s motion to quash, finding the issuance of the subpoena was procedurally improper and untimely; (2) denying without prejudice the first motion to terminate sanctions as “vaguely worded”; and (3) denying the second motion to terminate sanctions as untimely. The order gave Complainant additional time to file a new motion.

Later in August 2017, Complainant filed a “Motion to Shorten Response Time to Produce Documents” in which he argued that the defendant had not provided certain

documents. The Subject Judge denied the motion because it did not comply with the requirements in the court's earlier order. Complainant then filed a motion to compel the defendant to provide requested documents. The Subject Judge later denied the motion because the discovery deadline had passed and, alternatively, because Complainant had failed to comply with the court's earlier order allowing him to file a new discovery-related motion. Also in August 2017, the parties filed cross-motions for summary judgment.

In March 2018 the Subject Judge entered an order granting the defendant's motion for summary judgment and denying Complainant's motion for summary judgment, generally finding that Complainant had failed to establish a prima facie case of employment discrimination based on race or disability. Complainant appealed. He also filed a motion seeking sanctions against the defendant "for failure to disclose and [s]piliation of evidence," and the Subject Judge denied the motion, noting that the court lacked jurisdiction in light of Complainant's appeal. In January 2019 this Court affirmed the district court's judgment.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant complains about the actions of the defendant in the case, and he asserts the defendant "used Spoliation o[f] evidence, altered evidence, used perjury, judicial estoppel, and hearsay to terminate" him. He generally takes issue with the Subject Judge's discovery-related orders in the case, contending in part that the Subject Judge "ignored all means of getting" certain information from the defendant.

Complainant states that the Subject Judge "conformed a decision that allowed the defendant to alter evidence, with[hold] evidence, commit perjury, and judicial estoppel," and he asserts that, if not for the Subject Judge's actions, he would have prevailed on his claims. Complainant also discusses the merits of the claims raised in his lawsuit, and he attached various documents to his Complaint.

### 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, rulings, 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims 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**.

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

Chief Judge