

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

AUG 08 2019

David J. Smith  
Clerk

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

**Judicial Complaint No. 11-19-90057**

**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 February 2012 Complainant filed a “Notice and Demand to Appear Before a Complete and Qualified Federal Grand Jury” in which she alleged that the Subject Judge and others committed the crimes of conspiracy to obstruct justice and obstruction of justice. In March 2012 a district judge who is not the Subject Judge entered an order dismissing the Notice and Demand, stating that if Complainant wished to pursue a criminal investigation, she should coordinate her complaints through the United States Attorney for the district.

The record also shows that in February 2015 Complainant and another individual (referred to collectively in this order as “the plaintiffs”) filed a lawsuit against the \_\_\_\_\_, a \_\_\_\_\_, and multiple \_\_\_\_\_, raising allegations pertaining to previous lawsuits Complainant had filed. The next month, the plaintiffs filed an amended complaint against the individual defendants, generally alleging they violated Complainant’s constitutional rights and threatened and harassed her by requiring her to meet with the United States Marshals Service following her request for certain names and contact information. The defendants filed motions to dismiss the case.

After various proceedings, in June 2016 the Subject Judge entered an order granting the defendants’ motions to dismiss the case. The Subject Judge found that the plaintiffs did not properly assert any causes of action against the government and that, in any event, the asserted grounds for waiving sovereign immunity were inapplicable. The

Subject Judge also found that the individual defendants were entitled to absolute immunity as to certain claims and the plaintiffs failed to state a cause of action as to the remaining claims. The plaintiffs appealed, and this Court later granted the \_\_\_\_\_ motion for summary affirmance, holding that the plaintiffs abandoned all arguments on appeal.

After that, the plaintiffs filed a “Motion to Vacate Order for Fraud on the Court,” arguing that the Subject Judge should have recused or been disqualified because she had served as \_\_\_\_\_ for the district from \_\_\_\_\_ to \_\_\_\_\_. In another filing the plaintiffs contended the Subject Judge had a conflict of interest because one of the defendants had previously represented the Subject Judge in a different lawsuit. In June 2017 the Subject Judge entered an order denying the motion to vacate, generally finding the plaintiffs had not established that there was a fraud on the court or that the Subject Judge should have recused herself or been disqualified. The plaintiffs filed a “response” to the order, and in July 2017 the Subject Judge entered an order construing the response as a motion for reconsideration and denying it. In May 2018 the plaintiffs filed motions seeking the production of documents, which the Subject Judge denied.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge engaged in conduct that “undermines public confidence in the integrity and impartiality of the judiciary, creates a strong appearance of impartiality of the judiciary, . . . and is by reason of judicial misconduct[] ‘unable to discharge all the duties’ of the judicial office.” Complainant then asserts that the Subject Judge “has not complied with constitutional requirements and other court rules and decision laws for the coordination of criminal and civil health care fraud sanctions,” and that “all of her decisions in fraud cases should be reversed.”

Complainant contends that the Subject Judge should have recused herself from Complainant’s case because she served as the \_\_\_\_\_ for the district from \_\_\_\_\_ to \_\_\_\_\_ and one of the defendants served under her at that time. Complainant asserts that the Subject Judge’s failure to recuse created a strong appearance of impartiality and impropriety. Complainant also notes that she accused the Subject Judge of conspiring to obstruct justice and obstruction of justice, and she states that the Subject Judge’s “honesty, integrity, impartiality, to serve as a judge is impaired.” She attached various documents to her Complaint. She requests a transfer of the Complaint proceeding to another circuit.<sup>1</sup>

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<sup>1</sup> Complainant’s request for a transfer of her Complaint proceeding to another circuit is DENIED.

## 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, including her decision not to recuse, 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 was not impartial, committed a crime, 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