

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-19-90080**

**FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT**

**JAN 24 2020**

**David J. Smith  
Clerk**

**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 December 2015 Complainant filed in a federal district court an employment discrimination lawsuit against a company, and in May 2016 the case was transferred to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_. A few months later, he filed an amended complaint. In November 2016 the defendant filed a partial motion to dismiss, and in February 2017 the Subject Judge granted the motion, dismissed a negligence claim, and gave Complainant an opportunity to file another amended complaint. Complainant filed an amended complaint in May 2017, raising claims in connection with the defendant’s failure to promote him. The defendant filed a motion to dismiss, and, following a hearing, the Subject Judge entered an order denying the motion to dismiss.

In September 2017 Complainant filed a motion for summary judgment. In January 2018 the Subject Judge entered an order extending the summary judgment motion deadline to March 2018 to give the parties an opportunity to mediate the case. In late February 2018, the defendant filed a motion for extension of time to submit dispositive motions, and the Subject Judge granted the motion and extended the deadline for three weeks.

In March 2018 the defendant filed a motion for summary judgment. The next month, Complainant filed a response in opposition. Later in April 2018 the defendant

filed a motion for a four-day extension of time to file a response, which the Subject Judge granted. In May 2018 the defendant filed a brief in opposition to Complainant's summary judgment motion, Complainant filed a memorandum in support of his summary judgment motion, and the defendant filed a reply brief in support of its summary judgment motion.

In September 2018 the Subject Judge entered an order granting the defendant's motion for summary judgment and declining to exercise supplemental jurisdiction over Complainant's state law claims. The Subject Judge generally found that Complainant failed to demonstrate that the defendant's legitimate, non-discriminatory reasons for failing to promote him were a pretext for unlawful discrimination.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge "wrongfully delayed her decision and made decision [sic] from the bench[], substantively adversely to [Complainant], on the basis of delays, bias and decision-making." Complainant contends that the Subject Judge "sided with" the defendant in delaying a ruling on his motion for summary judgment, and the delay gave the defendant time to mislead him into believing it was going to negotiate a possible settlement.

Complainant complains it took the Subject Judge more than a year to rule on his summary judgment motion and that there were "numerous bias [sic] decisions/delays given to the defendant in order to win this decision, which is Judicial misconduct." He complains the defendant was granted multiple extensions of time to file its motion for summary judgment, and that, if the defendant "was not granted such bias," the case would have been decided in his favor.

Complainant then alleges the Subject Judge: (1) is "anti-pro se, favoring attorney over pro se litigant"; (2) advocated for the defendant and acted as defense counsel; (3) selectively used portions of the pleadings to support the defendant; (4) imposed limitations on Complainant's motions that she did not impose on the defendant; (5) granted the defendant's motions for extensions of time, which delayed the case in its favor; (6) "advocated and granted defendant favor by allowing mediation and disregarding [his] motion for summary judgment"; and (7) acted with bias in deciding the motion for summary judgment.

Complainant asserts the records show "judicial indifference to the law and judicial bias against" his pro se complaint. He states the Subject Judge's rulings "were a clear display of either ex parte contact, bias and other improper motive," and he contends that the Subject Judge violated 18 U.S.C. § 3571 (Sentence of fine) and 28 U.S.C. § 453

(Oaths of justices and judges). Complainant seeks to have his case transferred to another district 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, 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge delayed the case with an improper motive, was biased against Complainant or pro se litigants or in favor of the defendant, engaged in improper ex parte communications, violated her oath of office, 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