

DEC 14 2015

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**111590088**

**IN RE: COMPLAINT OF JUDICIAL  
MISCONDUCT OR DISABILITY**

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**ON PETITION FOR REVIEW\***

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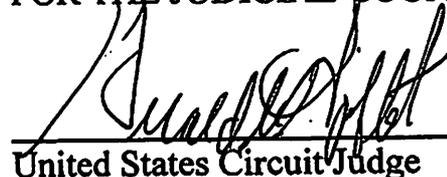
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Steele, and Rodgers, the order of Chief Judge Ed Carnes filed on 23 September 2015, and of the petition for review filed by the complainant on 19 October 2015, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

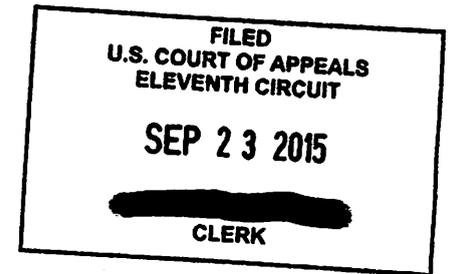
FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

\* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

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



**Judicial Complaint No. 11-15-90088**

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Magistrate 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 Magistrate 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of that supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in July 2014 Complainant filed a prisoner civil rights action against three defendants, generally alleging that they violated his constitutional rights in connection with his arrest and the medical care he received at his place of incarceration. He also moved to proceed in forma pauperis (IFP). On July 14, 2014, the Subject Judge entered an order determining that Complainant’s IFP motion was inadequate and directing him either to pay the full filing fee or submit a completed IFP motion within 30 days. On July 31, 2014, Complainant filed another motion to proceed IFP. On the same day, he filed a motion for a change of venue and for recusal of “[a]ssigned [m]agistrates” in which he argued that his case should be transferred to another venue and alleged that bias and prejudice were present in the case.

On March 2, 2015, the Subject Judge entered an order granting Complainant’s motion to proceed IFP and denying his motion for a change of venue and for recusal. The Subject Judge found that venue was proper and that Complainant had failed to provide any basis, factual or legal, for recusal. The Subject Judge directed the clerk to assess \$35.00 as an initial partial filing fee and noted that Complainant was responsible

for making monthly payments until the full filing fee had been paid. On April 6, 2015, the Subject Judge entered an order noting that Complainant had failed to submit the initial partial filing fee and directing him to show cause within 14 days why the case should not be dismissed for failure to prosecute and/or failure to comply with an order of the court.

On April 20, 2015, Complainant filed a response in which he complained about delay in his case, discussed the merits of his claims, and stated that he had authorized the withdrawal of \$35.00 to be applied as the initial filing fee. The docket sheet shows that the next day, he paid a partial filing fee of \$27.00. A couple of days later, the Subject Judge entered an order giving Complainant 21 days to pay the remainder of the initial partial fee. In May 2015 Complainant filed a response in which he stated that he had attempted to pay the initial partial filing fee but had been unable to through no fault of his own, and he moved to submit a more recent statement of his inmate trust fund account activity. On July 7, 2015, the Subject Judge entered an order denying Complainant's request to submit updated financial documents and gave him 14 days to pay the remainder of the initial partial filing fee. On July 24, 2015, the Subject Judge entered an order noting that Complainant had not paid the remainder of the fee and directing him to show cause within 14 days why the matter should not be dismissed for failure to prosecute and/or failure to comply with a court order.

Complainant then filed a motion for the appointment of counsel in which he alleged that the Subject Judge had attempted to "malign" him, excessively delayed the case, shown bias against him, and taken actions to cause the case to be dismissed. He also paid \$24.00 toward the filing fee. In August 2015 he filed a response to the show cause order in which he argued that his inmate trust account was being manipulated by the Department of Corrections in order to lead to the dismissal of his case. After that, the Subject Judge denied Complainant's motion for the appointment of counsel without prejudice, finding that the case did not present exceptional circumstances warranting the appointment of counsel at that time.

The record also shows that in March 2015 Complainant filed in this Court a petition for writ of prohibition naming the Subject Judge as the respondent. In the petition, Complainant took issue with the delay in the Subject Judge's rulings and requested that this Court order a change of venue. In July 2015 this Court clerically dismissed the petition for want of prosecution because Complainant failed to pay the filing fees or file a consent form within the time fixed by the rules.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct because there was an "over one year delay" in the case. Complainant alleges that the Subject Judge caused "Extreme, Excessive delays"

and allowed “abuses” in the assessment and collection of fees. Complainant also attached a document in which he took issue with the assessment and collection of fees in the case, alleged that the Subject Judge was biased in favor of the defendants and violated the United States Constitution, and stated that the Subject Judge’s actions constituted a “disability in the Bill of Rights . . . .”

### Supplement

In his supplemental statement, Complainant takes issue with the assessment and collection of fees in the case. To the statement, he attached, among other things, the motion for appointment of counsel that he filed in the case, in which he alleged that the Subject Judge had attempted to “malign” him, excessively delayed the case, shown bias against him, and taken actions to cause the case to be dismissed.

### Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) 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 power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action of a judge — without more — is merits-related.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge — in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders entered in the case, as well as the allegations of delay, 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 allegations that the Subject Judge was biased or prejudiced against him, was biased in favor of the defendants, suffered from a disability, 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