

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
DEC 18 2015  
Amy C. Nerenberg  
Acting Clerk of Court

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

**Judicial Complaint Nos. 11-15-90129 through 11-15-90131**

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

**IN RE: The Complaint of \_\_\_\_\_ against U.S. District Judge \_\_\_\_\_ of the U.S. District Court for the \_\_\_\_\_ District of \_\_\_\_\_, and U.S. Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ of the U.S. Court of Appeals for the \_\_\_\_\_ Circuit, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.**

**ORDER**

\_\_\_\_\_ (“Complainant”) has filed this Complaint against United States District Judge \_\_\_\_\_ and United States Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ (collectively, “the Subject Judges”), 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 July 2014 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, generally challenging his state court conviction. After various proceedings, in January 2015 Judge \_\_\_\_\_ denied Complainant’s § 2254 petition as untimely and found that equitable tolling was inapplicable. Judge \_\_\_\_\_ also determined that Complainant was not entitled to a certificate of appealability (COA) and was not entitled to proceed in forma pauperis (IFP). In March 2015 Complainant filed a motion for reconsideration, which Judge \_\_\_\_\_ construed as a motion for leave to file a belated appeal and granted. Complainant then filed a notice of appeal.

In this Court, Complainant filed a motion to proceed IFP and a motion for a COA. In June 2015 Judge \_\_\_\_\_ denied the motion for a COA and denied the IFP motion as moot. The next month, Complainant filed a “Motion for Reconsideration En Banc,” raising various arguments. In September 2015 a two-judge panel comprised of Judges \_\_\_\_\_ and \_\_\_\_\_ denied the motion for reconsideration, holding that Complainant had offered no new evidence or meritorious arguments to warrant relief.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that there is a “conflict of interest because of the judicial misconduct of” the Subject Judges. He contends that Judges \_\_\_\_\_ and \_\_\_\_\_ “wrongfully denied” him a COA, and that Judges \_\_\_\_\_ and \_\_\_\_\_ “wrongfully denied” his motion for reconsideration. Complainant asserts that an evidentiary hearing should have been held so that he could present evidence that his habeas petition was timely and that he was entitled to equitable tolling. He asserts that Judges \_\_\_\_\_ and \_\_\_\_\_ ignored certain evidence and that their statement that he did not provide new evidence was “completely false.” Complainant states that the Subject Judges “are merely trying to protect their friends from prosecution” and that he is being denied his “basic and fundamental constitutional rights of due process and equal protection.” He also states that the Subject Judges “are trying to attack the validity of my claims outside of court proceedings by directly conspiring with the” State Attorney General and/or counsel for the State.

Complainant lists the following “facts proving the claims of conflict of interest and judicial misconduct”: (1) “[s]omeone” stole his mail to try to prevent him from filing an appeal; (2) Judge \_\_\_\_\_, among other things, worked for the U.S. Attorney’s Office in \_\_\_\_\_ and was appointed to \_\_\_\_\_ Court of Appeal, which was the “district that wrongfully denied” Complainant’s appeals; (3) Judge \_\_\_\_\_ issued an order “wrongfully denying relief” 11 days after a certain “sex sting,” and the order “contained the prosecution[’]s erroneous legal arguments and distorted facts”; (4) Judge \_\_\_\_\_ was a judge for the \_\_\_\_\_ Circuit of \_\_\_\_\_, where the Attorney General’s office is located, and he was employed by the U.S. District Court for the \_\_\_\_\_ District of \_\_\_\_\_, which is “the agency under attack”; (5) Judge \_\_\_\_\_ “is currently on the Judicial Council causing a conflict of interest,” and he served in various capacities in \_\_\_\_\_; (6) the State “deliberately hand-picked these judges, their friends.” Finally, Complainant takes issue with certain “stings” conducted in \_\_\_\_\_ and takes issue with actions of certain “government agencies” and other law enforcement officials. He attached various documents to his Complaint.

## 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.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ findings and orders entered in Complainant’s case and appeal, the allegations are directly related to the merits of the Subject Judges’ 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 Judges had a conflict of interest, were part of a conspiracy, 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