

JUN 07 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90023**

**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 the supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2011 Complainant filed a second amended 28 U.S.C. § 2254 Petition for Writ of Habeas Corpus challenging certain state court convictions and arguing, among other things, that he was being held pursuant to a void judgment in violation of the United States Constitution. In October 2011 he filed a motion to recuse the Subject Judge, alleging that she had disregarded the record, and the Subject Judge denied the motion, finding that Complainant did not establish a basis for her recusal. In April 2012 the Subject Judge issued a report recommending that Complainant’s § 2254 petition be denied, generally finding that he did not establish that he was entitled to relief. Over Complainant’s objections, in May 2012 the district judge adopted the Subject Judge’s report and recommendation and denied Complainant’s second amended § 2254 petition. This Court denied Complainant’s motion for a certificate of appealability (COA).

The record shows that in January 2013 Complainant filed a § 2254 petition raising various claims, including claims that the state court lacked personal jurisdiction over him. In June 2013 the Subject Judge issued a report recommending that the § 2254 petition be

dismissed to the extent it presented a new claim for relief because it was an unauthorized second or successive petition, and that it be denied to the extent it was construed as a Fed.R.Civ.P. 60(b) motion. After that, the district judge adopted the report and recommendation, dismissed the § 2254 petition to the extent it presented a new claim for relief, denied it to the extent it was construed as a Rule 60(b) motion, and denied other motions Complainant had filed. In October 2013 this Court denied Complainant's motion for a COA.

The record also shows that in September 2015 Complainant filed another § 2254 petition in which he generally argued that the Subject Judge and other judges had misapplied the law in connection with his initial § 2254 petition. After various proceedings, in November 2015 Complainant filed an amended petition raising an additional ground for relief involving an alleged misapplication of law by "Federal Judicial officials." He then filed a motion requesting an order directing the "Office of Attorney General" to incorporate a certain competency hearing transcript in the State's response.

In January 2016 the Subject Judge denied the motion without prejudice, noting that the respondent was required to attach to its answer parts of the transcripts that it deemed relevant and that Complainant would have an opportunity to move to supplement the record in connection with his reply. Complainant then filed a "Motion to Transcribe State Competency Hearing Transcripts" and a "Motion to Alter/Amend" the Subject Judge's previous order. In February 2016 the Subject Judge denied those motions for the reasons stated in her previous order and because Complainant failed to show that the previous order was clearly erroneous or contrary to law. Also in February 2016 the respondent filed a motion to dismiss the amended § 2254 petition for failure to demonstrate a valid basis for relief, and Complainant filed a response in opposition.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in fraud and obstructed "the fair administration of justice," and he appears to allege that the Subject Judge misconstrued his claims for relief in the cases. He also asserts that the Subject Judge has refused to include certain state court documents in the record. Complainant then discusses various statutes, cases, and constitutional provisions, and he generally alleges that the Subject Judge "unreasonably misapplied" federal law and rules in his cases. He specifically appears to challenge the Subject Judge's alleged "suspension of the writ" and enforcement of improper state court per curiam judgments, which he contends are not "fact-merits based" judgments. He attached various documents to his Complaint.

## Supplement

In his supplemental statement, Complainant asserts that there is no record “that verifies the District has not ignored his Fifth Amendment Double Jeopardy claim . . . and misdemeanor claim . . . .” He also alleges that the Subject Judge “intentionally ignored with record to verify courts judg[ ]ments” in violation of the law and in order to deny Complainant due process.

## 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 Judge’s official actions, findings, reports, and orders entered in the cases, 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 allegations 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**.

  
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Chief Judge