

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

111690027

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

\_\_\_\_\_  
ON PETITION FOR REVIEW\*  
\_\_\_\_\_

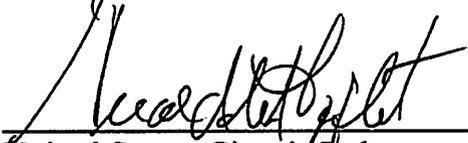
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Bowdre, and Land, the order of Chief Judge Ed Carnes filed on 7 June 2016, and of the petition for review filed by the complainant on 17 June 2016, 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 and Chief District Judge Rodgers did not take part in the review of this petition.

JUN 07 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90027**

**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”).

**Background**

The record shows that in April 2015 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, raising various challenges to certain state court convictions. The next month, he filed a request that the case number be changed, stating that he had religious objections to being assigned a case number with “\_\_\_\_\_” in it. He also filed a motion to recuse the Subject Judge, arguing that he should recuse because Complainant had filed a previous Complaint of Judicial Misconduct or Disability against him. On June 12, 2015, the respondent filed an answer to the § 2254 petition.

Later in June 2015, the Subject Judge entered an order denying the motion to recuse, generally finding that Complainant did not establish a basis for recusal. The Subject Judge also denied Complainant’s motion for the assignment of a different case number. Also in June 2015, the Subject Judge entered an order notifying Complainant that the court would treat the petition as ripe for summary disposition and that he had 20 days to supply any additional evidence or argument. After that, Complainant filed a motion for an extension of time to file a response to the respondent’s answer, and he later filed a “Counter Response.” On July 1, 2015, the Subject Judge granted the motion for extension of time, providing Complainant with 20 additional days to file any response.

In November 2015 Complainant filed a “Second Notice of Inquiry and Request for Ruling,” asking the court to rule on his § 2254 petition. In late December 2015, he filed a

“First Motion to Compel Ruling” in which he generally took issue with alleged delay in the case. In February 2016 Complainant filed a “Second Motion to Compel,” requesting that the district judge order the Subject Judge to issue a report and recommendation. On March 17, 2016, the Subject Judge issued a report recommending that Complainant’s § 2254 petition be dismissed with prejudice as time-barred. Over Complainant’s objections, the district judge adopted the report and recommendation and dismissed the § 2254 petition with prejudice.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge was biased and prejudiced against him in the habeas proceedings. Complainant contends that the Subject Judge, in violation of his oath of office, failed to act in an “expeditious and impartial” manner in the case, and he states that his § 2254 petition has been pending before the Subject Judge since August 2015. Complainant alleges that “contrary to RULE 4,” the Subject Judge has not issued a report and recommendation in the case, despite Complainant’s filings with the court requesting action. He states that he has received “no reply or correspondence whatsoever” as to why no action has been taken on his motions and habeas petition.

Complainant contends that the Subject Judge violated 28 U.S.C. § 144 by failing to recuse himself from the case, given that Complainant had filed “numerous complaints against him.” Complainant asserts that the Subject Judge’s actions have denied him his due process rights and prevented him from “going to any other proceedings,” and he states that he feels the Subject Judge’s actions are “intended to cause him loss and expense of filing” a mandamus petition with this Court. Complainant states that his Complaint of Judicial Misconduct or Disability concerns “the obvious Bias and Prejudice that is being inflicted” upon Complainant “as some form of punishment for [his] challenges and complaints about [the Subject Judge] in this and other matters.” Finally, Complainant states that the Subject Judge showed “indifference to” Complainant by failing to respond to his religious objection to being assigned a certain case number.

### 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.* (emphasis added). 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, orders, and report entered in the case, including any alleged delay in the case and the Subject Judge’s decision not to recuse, 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 was biased and prejudiced against Complainant, violated his 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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Chief Judge