

FILED  
JUDICIAL COUNCIL  
OF THE  
ELEVENTH CIRCUIT

SEP 30 2016

CIRCUIT EXECUTIVE

FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT

111690046

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, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Watkins, the order of Chief Judge Ed Carnes filed on 25 July 2016, and of the petition for review filed by the complainant on 15 August 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 Casey Rodgers did not take part in the review of this petition.

JUL 25 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90046**

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. District 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 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 November 2007 a federal grand jury issued a superseding indictment against Complainant and multiple codefendants, specifically charging Complainant with 18 counts stemming from a counterfeit check fraud conspiracy. Following a trial, a jury found him guilty as charged in the second superseding indictment. In June 2008 the Subject Judge sentenced him to a total term of 156 months of imprisonment. This Court affirmed Complainant’s convictions and sentences on direct appeal.

After that, Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, raising four claims of ineffective assistance of counsel. In June 2013 the Subject Judge determined that three of Complainant’s claims were meritless, but that an evidentiary hearing should be held on the claim that his attorney failed to notify him of a plea bargain offered by the government. That hearing was held before the Subject Judge in July 2013, and Complainant appeared *pro se*. After the hearing, the Subject Judge denied the § 2255 motion, generally finding that Complainant had failed to establish entitlement to relief. This Court clerically dismissed Complainant’s appeal for want of prosecution.

In November 2013 Complainant filed a “Motion for Consideration to Remand,” arguing that he should have been appointed counsel to represent him at the evidentiary hearing. In January 2014 the Subject Judge granted the motion and directed the

magistrate judge to appoint counsel for Complainant. In April 2014 another evidentiary hearing was held before the Subject Judge. Later that month, the Subject Judge denied Complainant's § 2255 motion, finding that he did not establish that he was prejudiced by his counsel's conduct, and alternatively, that counsel's performance was not deficient. In May 2014 the Subject Judge granted Complainant a certificate of appealability on the issue of whether he was denied effective assistance of counsel in connection with a plea offer. This Court affirmed the district court's denial of Complainant's § 2255 motion, holding that he had not shown that he was prejudiced by his counsel's alleged conduct.

The record also shows that in June 2014 Complainant filed a petition for writ of mandamus with this Court, alleging that the district court committed various errors in the criminal and habeas proceedings. In September 2014 this Court denied the petition because Complainant had an adequate alternative remedy to a writ of mandamus.

### Earlier Complaint

In an earlier Complaint of Judicial Misconduct or Disability, Complainant alleged that the Subject Judge was part of a conspiracy to violate his constitutional rights and to commit fraud in the criminal and habeas cases. Complainant attached a letter in which he alleged that there was "Extreme Judicial Bias" at the July 2013 evidentiary hearing, and in a supplemental statement, he alleged that at the April 2014 evidentiary hearing, the Subject Judge exhibited bias and conspired to commit fraud by altering the record.

Because that Complaint was merits-related and based on allegations lacking sufficient evidence to raise an inference of misconduct, it was dismissed. The Judicial Council Review Panel affirmed that dismissal, and the matter is closed.

### Complaint

In his current Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "instructed the jury to change a hung jury to a verdict of guilty, inducing the debt of bias and partiality." He alleges that the Subject Judge engaged in fraud, abused his authority, and exhibited "extreme judicial bias and prejudice . . . throughout the cases and suppression hearings." Complainant generally alleges that there was a conspiracy to cover up facts and to alter the record. He asserts that the Subject Judge conspired with attorneys to commit fraud by preventing information from being put on the record at the second evidentiary hearing. He also alleges that charges were added at the sentencing hearing, that forged signatures and initials were presented at a suppression hearing, and that in the second evidentiary hearing, the Subject Judge altered the record, "deviating from what was said and done in the first evidentiary hearing." Finally, Complainant raises allegations against individuals other than the Subject Judge. 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.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those allegations and address only any allegations that have not previously been considered. See JCDR 11(c)(2).

Complainant’s allegations concerning the Subject Judge’s alleged participation in a conspiracy to commit fraud, bias, and alteration of the record have already been considered in connection with his earlier Complaint of Judicial Misconduct or Disability. To the extent Complainant raises allegations that have not previously been considered, he provides no credible facts or evidence in support of his allegations that the Subject Judge “instructed the jury to change a hung jury to a verdict of guilty” 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