

AUG 24 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90019**

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

---

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.

---

**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 September 2016 \_\_\_\_\_ filed a *pro se* motion to vacate, set aside, or correct his sentence, challenging certain convictions. In January 2017 Complainant filed a “Motion to Appear as Counsel for Petitioner after Declaratory and Injunctive Relief” in which he noted that a district judge had entered an order suspending him from the practice of law in the district court. In the motion, Complainant argued, among other things, that the court’s suspension order was “not a judicial order entitled to any preclusive effect; rather, it is a prosecutors’ order[.]” and he cited a United States Supreme Court case.

A magistrate judge denied Complainant’s motion without prejudice, finding in part that his challenges to the suspension order were more appropriately raised in an appeal. Complainant filed objections to the magistrate judge’s order in which he argued that the suspension order was not a preclusive order and discussed a Supreme Court case. \_\_\_\_\_ then filed a motion to be represented by Complainant. Later in January 2017, the Subject Judge entered an order denying Complainant’s objections and \_\_\_\_\_ motion. The Subject Judge found that the suspension order provided a clear remedy for Complainant to be able to resume practicing in the court, but he failed to show that he had complied with that order. A couple of days later, Complainant filed a motion for reconsideration, arguing that the Subject Judge failed to address his argument that the suspension order did not have preclusive effect.

On the same day, the Subject Judge denied the motion for reconsideration, noting that the argument Complainant quoted from his earlier motion was “incomprehensible.” Complainant filed a motion for leave to file a renewed motion for declaratory and injunctive relief, asserting that his renewed motion would clarify his previous argument. He also filed a proposed renewed motion to appear as counsel for \_\_\_\_\_. In late January 2017, the Subject Judge denied Complainant’s motion, stating in part that the language Complainant had “pluck[ed]” from the Supreme Court’s decision had nothing to do with the validity or force of a judge’s order suspending an attorney’s ability to practice law. The Subject Judge also stated that failure to comply with the suspension order could result in Complainant being held in contempt of court.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge “used denigrating language” when she stated that he “pluck[ed]” language from a Supreme Court decision. He complains that the Subject Judge quoted from a certain case “without adequately[]distinguishing” the case from which he had quoted. Complainant states that the Subject Judge threatened him with contempt if he failed to comply with the suspension order. Finally, he states that the Subject Judge “appears to be biased against [him] by being biased in favor of” the district judge who issued the suspension order.

### 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, rulings, and orders entered in the case, 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 against him or in favor of a district judge 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**.



---

Chief Judge