

OCT 05 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90023**

**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 August 2014 Complainant filed an amended 28 U.S.C. § 2241 petition for writ of habeas corpus, arguing that he was being illegally detained because the state Department of Corrections had refused to give effect to his coterminous state sentences. The next month, Complainant moved to proceed in forma pauperis (IFP), and in December 2014 a magistrate judge granted the motion. In August 2015 Complainant filed a “Motion to Rule,” requesting that the court rule on his § 2241 petition. On September 14, 2015, the Subject Judge granted the motion, noting that Complainant’s claim was under consideration and that the court would enter a ruling as its calendar permitted.

In February 2016 Complainant filed a “Motion to Compel Ruling” in which he requested a ruling in the case. A couple of months later, the Subject Judge granted the motion, stating that Complainant’s claim was under consideration and that the court would enter a ruling as its calendar permitted. In July 2016 Complainant filed a “Motion to Expedite Ruling,” and in October 2016 the Subject Judge granted the motion, again stating that Complainant’s claim was under consideration and that the court would enter a ruling as its calendar permitted.

A few days later, Complainant filed a petition for writ of mandamus in this Court, requesting an order directing the district court to rule on his § 2241 petition without further delay, and he also moved to proceed IFP. In January 2017 this Court granted

Complainant's IFP motion, determining that he had established undue delay by the district court. This Court held the mandamus petition in abeyance for 60 days to allow the district court to rule on his § 2241 petition.

In February 2017, in the district court, the Subject Judge entered an order denying Complainant's § 2241 petition, finding it was barred by the applicable statute of limitations. The next month, this Court dismissed Complainant's mandamus petition as moot in light of the district court's denial of his § 2241 petition.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in misconduct on September 14, 2015, "concerning well established law concerning a coterminous sentence." He also complains about delay in the case, states that the Subject Judge has refused to rule on the merits of the case, and notes that this Court determined that he had established undue delay by the district court. 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.

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. The Commentary explains that "[s]uch 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."

All of Complainant's allegations, including his allegations of delay, concern the substance of the Subject Judge's official actions, findings, and orders entered in the case, and the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings.

The allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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