

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

**111690094**

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

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

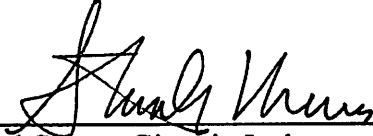
Before: HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DUBOSE and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Marcus, Wilson, Pryor, Moore and Land, the order of Acting Chief Judge Gerald Bard Tjoflat filed on 3 January 2017, and of the petition for review filed by the complainant on 6 February 2017, 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, Circuit Judge Gerald Bard Tjoflat and Chief District Judge Rodgers did not take part in the review of this petition.

JAN 03 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90094**

**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 April 1991 a jury found Complainant guilty on various counts, and the next month the Subject Judge imposed a death sentence as to one of the counts. On appeal, this Court vacated Complainant’s conviction and sentence for conspiracy, but affirmed all of his other convictions and sentences, including his death sentence. In its opinion, this Court noted that a state prosecutor who handled certain charges against Complainant and others “was appointed Special Assistant United States Attorney and assisted in this prosecution.”

After various additional proceedings, in November 2015 Complainant filed a motion seeking “the part of the record . . . in which \_\_\_\_\_ was Appointed Special Assistant United States Attorney.” A district judge who is not the Subject Judge denied the motion. Complainant appealed that order, and this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “intentionally made a false representation of a matter of fact,” specifically, the “fact that \_\_\_\_\_ District Attorney \_\_\_\_\_ was appointed special prosecutor in this case for the United States is false and misrepresented and denied [Complainant] a fair trial.” He contends that the statement “allowed \_\_\_\_\_ to

prosecute outside of his jurisdiction and beyond his prosecutorial powers without being *specially* appointed by the Court.” Complainant asserts that \_\_\_\_\_ “was allowed to ask a federal jury to convict [Complainant] in ‘his’ closing argument with only a wink and a nod from” the Subject Judge. Complainant states that this Court made an error of fact in determining that \_\_\_\_\_ had been appointed special prosecutor, and that he “found out in 2016 through the Justice Department” that \_\_\_\_\_ “was never appointed special prosecutor.”

Complainant states that he is “asking if [the Subject Judge] violated court rules when he allowed State Prosecutor \_\_\_\_\_ to prosecute” Complainant “with just a wink and a nod where he had an interest in the outcome.” He also “asks if there was an impermissible risk of actual bias when [the Subject Judge] allowed this to happen.” He attached various documents to his Complaint.

### Discussion

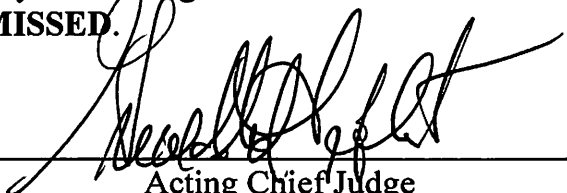
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions and findings 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 claims that the Subject Judge intentionally made a false statement 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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Acting Chief Judge