

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

FEB 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-16-90098 through 11-16-90100**

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

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IN RE: The Complaint of \_\_\_\_\_ against U.S. District Judge \_\_\_\_\_ of the U.S. District Court for the \_\_\_\_\_ District of \_\_\_\_\_ and U.S. Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ of the U.S. Court of Appeals for the \_\_\_\_\_ Circuit, 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 \_\_\_\_\_ and United States Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ (collectively, “the Subject Judges”), 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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2013 Complainant filed a prisoner civil rights action against a defendant, raising a claim involving a failure to investigate and prosecute individuals responsible for an alleged murder. In September 2013 Judge \_\_\_\_\_ adopted a magistrate judge’s report and recommendation and dismissed the complaint for failure to state a claim on which relief could be granted. After that, Complainant filed, among other things, motions seeking reconsideration of the dismissal order, which Judge \_\_\_\_\_ denied. One of \_\_\_\_\_ orders directed that if Complainant attempted to file anything further in the case, the clerk was to return the original to him with a notation in the record.

In August 2015 Complainant filed a letter to Judge \_\_\_\_\_ in which he complained that he was not advised of his right to appeal. Judge \_\_\_\_\_ construed the filing as a motion to file an out-of-time appeal and denied it, stating that the time for filing an appeal ended in October 2013 and that, rather than appeal, Complainant

“barraged the Court with redundant and frivolous motions.” Complainant then filed a notice of appeal, and he moved to proceed in forma pauperis (IFP) on appeal. In January 2016 Judge \_\_\_\_\_ denied the IFP motion. Also in January 2016 a panel of this Court that included Judges \_\_\_\_\_ and \_\_\_\_\_ sua sponte dismissed the appeal for lack of jurisdiction because Complainant’s notice of appeal was untimely. Complainant filed a motion for reconsideration, which the panel denied in February 2016.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant appears to allege that Judge \_\_\_\_\_ acted with a “malicious intent” by sharing confidential information with an individual at his place of confinement. He also questions why Judge \_\_\_\_\_ was involved in his motion to proceed IFP on appeal. Complainant appears to allege that Judges \_\_\_\_\_ and \_\_\_\_\_ should have recused themselves from his appeal because they had been involved in a previous appeal of his. Finally, he states that he “cannot see” how the court is “ignoring” the murder of an unnamed individual.

### Supplements

In his first supplemental statement, Complainant appears to question why Judge \_\_\_\_\_ would send an order denying his IFP motion to an individual at his place of confinement, asserting that the action created a conflict of interest and violated “atty client privilege/confidentiality” because Complainant had filed a lawsuit against the facility. He reiterates his allegations that Judges \_\_\_\_\_ and \_\_\_\_\_ should have recused themselves from his appeal, and he states that they acted with “malice” and “unprofessionalism.” In his second supplemental statement, Complainant generally reiterates his allegations, and takes issue with Judges \_\_\_\_\_ and \_\_\_\_\_ denial of his motion for reconsideration.

### 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 Judges' official actions, findings, and orders issued in his case and appeal, including Judges \_\_\_\_\_ and \_\_\_\_\_ decision not to recuse, the allegations are directly related to the merits of the Subject Judges' 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 Judges acted with improper motives 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**.

A handwritten signature in black ink, appearing to read "James", written over a horizontal line.

Chief Judge