

JAN 09 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-16-90118 through 11-16-90121**

**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 \_\_\_\_\_, 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 Judges \_\_\_\_\_ and \_\_\_\_\_ 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”).

Background

The record shows that in April 2013 a federal grand jury indicted Complainant on six counts of theft of government property, six counts of aggravated identity theft, one count of conducting an unlawful monetary transaction, and one count of obstructing a criminal investigation. After a trial, the jury found Complainant guilty on all counts, and Judge \_\_\_\_\_ granted the government’s motion to dismiss one count of aggravated identity theft as a matter of law. After a sentencing hearing in October 2013, Judge \_\_\_\_\_ sentenced Complainant to a total term of 102 months of imprisonment. Complainant appealed.

In June 2015 a panel of this Court comprised of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_<sup>1</sup> affirmed Complainant’s convictions and sentences. The panel held that: (1) the evidence was sufficient to support Complainant’s convictions; (2) the district court did not err in admitting certain evidence; and (3) the district court did not err at sentencing in determining the amount of loss or the number of victims.

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<sup>1</sup> Judge \_\_\_\_\_ sat on the panel by designation.

In December 2015 Complainant filed an amended 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence in which he argued, among other things, that the district court violated his constitutional rights in the criminal case, “double counted [his] prison sentence,” and improperly determined the amount of loss at sentencing. In July 2016 Judge \_\_\_\_\_ denied the § 2255 motion, finding that his claims either had been decided against him by this Court, were not cognizable, had been procedurally defaulted, or lacked merit.

Complainant then filed multiple motions seeking various types of relief, including a motion for a certificate of appealability in which he argued in part that a fraud on the court had been committed in connection with a government exhibit. In August 2016 Judge \_\_\_\_\_ denied the motion, finding that Complainant failed to make a substantial showing of the denial of a constitutional right. After that, Complainant filed a motion to recuse Judge \_\_\_\_\_ in which he alleged that she was racially biased and had sentenced a “white man” with the same amount of loss “to a term of house arrest / probation.” Judge \_\_\_\_\_ denied the motion to recuse, stating that she did not have a racial bias and that Complainant had not shown that her impartiality might reasonably be questioned.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that Judge \_\_\_\_\_ allowed the government and the Internal Revenue Service (“IRS”) to increase his loss amount “without any explanation or sanction.” He alleges that Judge \_\_\_\_\_ showed favoritism to the government and the IRS and is “racially biased against minorities.” Complainant then generally takes issue with his convictions and sentences, and he states that Judge \_\_\_\_\_ “double counted” his term of imprisonment. He states that he “observed [Judge \_\_\_\_\_] sentence a white man with the same loss as the complainant to house arrest / probation,” and that she sentenced “the white man co-defendant to a term of 102 months of imprisonment (Hispanic American).” Complainant also alleges that Judge \_\_\_\_\_ refused to dismiss certain counts that the prosecutor had agreed to dismiss, which constituted “gross incompet[e]nce.” He alleges that Judge \_\_\_\_\_ ignored: (1) the fabrication of evidence by the government in an exhibit; (2) that he returned a certain amount of money to the IRS; and (3) the legal definition of a “victim.”

Next, Complainant takes issue with the decision issued by the panel comprised of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, contending that the panel “[a]ll but ignored” holdings of the United States Supreme Court pertaining to the burden of proof for aggravated identity theft and ignored the legal definition of a “victim.” He states the panel “all but disregarded” an issue pertaining to “relevant conduct,” ignored commentary in the United States Sentencing Guidelines, and “all but gave the District Court ‘green light’” to violate his Eighth Amendment rights. Finally, Complainant

alleges that the panel expanded the statute pertaining to aggravated identity theft and “stre[tch]ed the aggravated identity theft way to[o] far.” Complainant attached various documents to his Complaint.

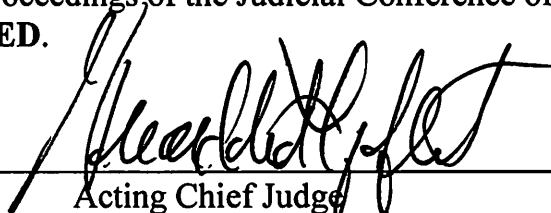
### Discussion

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 Judges’ official actions, findings, rulings, opinion, and orders issued in Complainant’s cases, 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 Judge \_\_\_\_\_ was not impartial, is racially biased, or is incompetent, or that any of the Subject Judges 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