

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

APR 26 2017

CIRCUIT EXECUTIVE

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

**111690128**

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

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ON PETITION FOR REVIEW\*

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Before: TJOFLAT, 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 Tjoflat, Wilson, Pryor, Thrash and Land, the order of Chief Judge Ed Carnes filed on 1 February 2017, and of the petition for review filed by the complainant on 23 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 and Chief District Judge Rodgers did not take part in the review of this petition.

FEB 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90128**

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Magistrate 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 Magistrate 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”).

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

Background

The record shows that in May 2016 Complainant filed in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ a “Petition for the Great Writ of Habeas Corpus by a Person Unlawfully Imprisoned” in which he challenged a state court conviction and stated that his petition was being filed pursuant to a certain state statute. In September 2016 a district judge issued an order stating that the case was a habeas action brought pursuant to 28 U.S.C. § 2254 and transferring the case to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_. Complainant then filed an “Objection to the Recharacterization” of his petition as one filed under § 2254 and a motion for a hearing.

In October 2016 the Subject Judge entered an order noting that Complainant’s petition would be construed as a § 2254 petition because he was challenging the constitutionality of his custody pursuant to the judgment of a state court. The Subject Judge directed Complainant to inform the court whether he wished to proceed under § 2254 on the claims in his original pleading, amend his pleading to assert additional claims under § 2254, or withdraw his petition. The district judge then denied

Complainant's motion for a hearing and referred the matter to the Subject Judge for further proceedings. After that, Complainant filed, among other things, motions for immediate release or action, which the Subject Judge denied.

In November 2016 the district judge issued an order overruling various objections Complainant had filed, noting that the court did not have jurisdiction over habeas corpus proceedings brought under the state statute. The district judge also entered an order adopting the Subject Judge's orders denying the motions for immediate release or action. Complainant then filed additional motions seeking various types of relief, which the Subject Judge denied. Also in November 2016, the Subject Judge issued a report recommending that Complainant's § 2254 petition be denied as untimely. Complainant then filed a motion to disqualify the Subject Judge, arguing that she had acted without authority in the case, and the district judge denied the motion. Over Complainant's objections, the district judge adopted the Subject Judge's recommendation and denied the petition as time-barred.

The record also shows that Complainant filed another habeas petition, and the Subject Judge ordered that it be docketed as a separate case in November 2016. Later that month, the Subject Judge entered an order construing the petition as one filed pursuant to § 2254 and directed Complainant to inform the court whether he wished to proceed under § 2254 on the claims in his original pleading, amend his pleading to assert new claims under § 2254, or withdraw his petition. Complainant filed multiple motions seeking various types of relief, including motions for handwriting analysis, and the Subject Judge denied those motions and other motions he had filed. In December 2016 Complainant filed a motion to disqualify the Subject Judge, alleging in part that she was part of a conspiracy and had engaged in fraud, and the district judge denied the motion.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge intentionally disregarded state and federal laws and "falsely advis[ed]" the court through her intentional disregard of the law. He contends that the Subject Judge denied, delayed, and suspended the "Great Writ of Habeas Corpus" that he sought pursuant to a state statute, and he takes issue with the treatment of his filings as § 2254 petitions.

Complainant alleges that the Subject Judge exceeded her authority under 28 U.S.C. § 636, and that she "knows or should have known" that she did not have authority to take any action in the cases. He asserts that the Subject Judge violated his federal and state constitutional rights, and that she did not "demonstrate[] her competence." Finally, he states that the Subject Judge is criminally liable for another individual's "Felony actions, with the intent to promote or assist him in Felony Kidnapping . . . ." To his

Complaint, Complainant attached a “Motion for Contempt” seeking to hold the Subject Judge in contempt.<sup>1</sup>

### Supplement

In his supplemental statement, Complainant alleges that the Subject Judge’s failure to take action in response to his filings caused her to become “a Party to said Fraud and Conspiracy to further Fraud in violation of her OATH of Office and Rules of Judicial Conduct in accordance with the Law.” He reiterates his allegations that the Subject Judge disregarded state and federal law. Complainant also takes issue with the actions of individuals other than the Subject Judge. He attached various documents to his supplement.

### 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, recommendation, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Furthermore, contrary to Complainant’s allegation, the Subject Judge did not exceed her authority by acting in the cases. Although a magistrate judge does not have the authority to rule on a dispositive motion without the parties’ consent, a magistrate judge may rule on certain pre-trial matters without such consent. *See* 28 U.S.C. § 636(b)(1)(A). That is what happened in these cases.

Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject

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<sup>1</sup> Complainant’s Motion for Contempt is DENIED.

Judge acted with an illicit or improper motive, was incompetent, engaged in fraud, was part of a conspiracy, violated her oath of office, 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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Chief Judge