

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

**111790075**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**JUL 25 2018**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW\***

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Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JULIE CARNES,\*\* and JILL PRYOR, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS,\*\* WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 29 March 2018, and of the petition for review filed by the complainant on 7 May 2018, 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 did not take part in the review of this petition.  
\*\* Circuit Judge Julie Carnes and former Chief District Judge M. Casey Rodgers participated in this decision but are no longer members of the Council.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 29 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90075**

**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 June 2010 a federal grand jury charged Complainant with  
a criminal offense stemming from his depositing of a package containing a hoax  
explosive in the United States Mail. A couple of months later, Complainant entered into  
a written plea agreement in which he pleaded guilty to the charge. Following a change-  
of-plea hearing, a district judge who is not the Subject Judge entered an order accepting  
the guilty plea. After that, the case was reassigned to the Subject Judge as the presiding  
district judge. In December 2010 the Subject Judge sentenced Complainant to a term of  
12 months of probation.

After various proceedings, in November 2015 Complainant filed a document in  
which he stated that he was recalling his plea agreement due to “multiple errors.” The  
Subject Judge construed the document as a motion to recall the plea agreement and  
ordered that it be stricken, finding, among other things, that Complainant could not  
unilaterally direct that his plea agreement be stricken or corrected. Complainant then  
filed two additional documents in which he stated that he was recalling his plea  
agreement, and the Subject Judge denied or struck those documents, finding Complainant  
could no longer challenge the plea agreement. Complainant filed a notice of appeal as  
one order, and this Court later affirmed the order, holding that he was not entitled to  
coram nobis relief.

In February 2016 Complainant filed in the district court a “Recall Final of the Plea  
Agreement” in which he again asserted that he was withdrawing his plea agreement. In

June 2016 the Subject Judge entered an order striking the document, finding that Complainant had no authority to recall or otherwise withdraw the plea agreement. The order further: (1) cautioned Complainant that a court could exercise its inherent authority to sanction “an abusive litigant”; (2) advised him that no document purporting to recall his plea or conviction would be permitted to appear on the docket; (3) stated that any further filing would result in the imposition of a \$500 fine, subject to his ability to show cause why a fine should not be imposed; and (4) provided that, if a fine was imposed, he would be required to appear in person to explain why the court should not direct that the fine be levied and collection procedures be implemented.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge’s June 2016 order, complaining that it referred to him as an “abusive litigant” and alleging that it constituted an obstruction of justice. Complainant contends that the Subject Judge blocked his attempts to “recall” his plea agreement, and he believes that the court lacks authority to deny “recall.”

Complainant alleges that the Subject Judge obstructed justice by: (1) ordering him not to submit further attempts to recall his plea agreement; (2) striking his “Recall Final of the Plea Agreement” from the record; (3) threatening to fine him if he submitted further attempts to recall his plea agreement; and (4) demanding that he “meet the Judge.” He asserts that he did nothing illegal, and yet his appointed attorney and the Subject Judge took no notice and took no action. He attached documents to his Complaint, including one in which he generally reiterates his allegations and takes issue with the Subject Judge’s actions and orders.

### 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, and orders entered 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 obstructed justice 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 "S. H. Kane", is written over a horizontal line.

Chief Judge