

APR 17 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90082**

**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 January 2016 Complainant filed a 28 U.S.C. § 2254  
petition for writ of habeas corpus challenging certain state court convictions. In April  
2016 the Subject Judge entered an order directing the respondent to show cause within 45  
days why the § 2254 petition should not be granted. After that, Complainant filed two  
motions for summary judgment, arguing that the respondent was in default. In June 2016  
the respondent filed a response to the petition and a motion to dismiss the petition as  
untimely. The next month, Complainant filed a “Request for Speedy and Unbias [sic]  
Ruling,” in which he generally argued that there had been undue delay in the case.

In October 2016 the Subject Judge issued an order and non-final report and  
recommendation in which he construed Complainant’s latest request as a motion for a  
speedy and unbiased ruling and granted it only to the extent that the present order and  
non-final report addressed the pending motions for summary judgment and motion to  
dismiss. The Subject Judge also recommended that: (1) Complainant’s motions for  
summary judgment and the respondent’s motion to dismiss be denied, and (2) the  
respondent be given 30 days to file a brief addressing the merits of the § 2254 petition.

No objections were filed, and in November 2016 the district judge issued an order adopting the Subject Judge's report and recommendation. The next month, the respondent filed a brief in support of its response to the § 2254 petition.

In February and March 2017, Complainant filed two motions for a "speedy and unbiased ruling." In April 2017 the Subject Judge issued an order: (1) granting the motions for a speedy and unbiased ruling only insofar as the court would issue a report and recommendation upon completion of review of the filings; (2) stating that the parties should not submit any further materials unless instructed to do so; and (3) reminding Complainant that the case might be dismissed if he failed to comply with the court's orders or keep the court advised of his current address.

In August 2017 Complainant filed a "Motion for Judicial Notice" in which he argued, among other things, that the court had delayed ruling on his § 2254 petition in an attempt to effectively dismiss the petition, violate his rights, and conceal his wrongful convictions. In January 2018 the Subject Judge issued an order granting the Motion for Judicial Notice, noting that the court would issue a report and recommendation on the merits of the § 2254 petition when review of the filings was complete.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that there has been "inordinate and prejudicial delay" in the case. He states that although the Subject Judge granted a motion for a speedy and unbiased decision, he violated his own order by failing to take action in the case. Complainant also complains that the order "included a gag rule" directing him "not to send anything and/or say anything." Complainant asserts that he sent a motion for judicial notice to the court by certified mail, and that the Subject Judge "went into hiding, as is the manner of guilty individuals," and refused to accept the document. He contends that the Subject Judge's actions and the record "prove conspiracy, mail fraud, and cover-up by the Judge and Attorney General who are behind the institutional and post-master plot."

Complainant alleges that the Subject Judge: (1) took actions "without a cause or given reason," which "infers fraud, conspiracy, and treason"; (2) is denying Complainant his rights to habeas corpus relief, free speech, and access to the courts; (3) has given the Attorney General the opportunity "to plot torture and attempted murder"; (4) acted to cover up crimes and treason committed by other judges and attorneys; (5) "violated the laws, his oath, and the Constitution"; (6) participated in "bullying and terrorizing"; (7) treated litigants, attorneys, or others in a demonstrably egregious and hostile manner; and (8) acted with an improper motive in delaying a decision in the case. Complainant also takes issue with the actions of individuals other than the Subject Judge.

## Supplement

In his supplemental statement, Complainant: (1) generally reiterates his allegations; (2) complains that he has not yet received a ruling on his Complaint of Judicial Misconduct or Disability; and (3) alleges that the Judiciary and other entities “have a covert agreement to cause a deadly accident through delays and silence.”

## 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, orders, and report and recommendation 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 acted with an improper motive in delaying a decision in the case 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