

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

**111890026**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**NOV 1 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, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Martin, Land, and Walker, the order of Chief Judge Ed Carnes filed on 2 July 2018, and of the petition for review filed by the complainant on 13 August 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 and Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 02 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-18-90026**

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Circuit Judge for  
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 Circuit  
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 February 2010 Complainant filed a 28 U.S.C. § 2254  
petition for writ of habeas corpus raising various challenges to his 2005 \_\_\_\_\_ state  
court convictions. In June 2010 the district judge adopted a magistrate judge’s report  
recommending that the § 2254 petition be dismissed with prejudice as an unauthorized  
successive petition. On appeal, a panel of this Court that did not include the Subject  
Judge vacated the district court’s judgment and remanded for further proceedings,  
holding that the court failed to address Complainant’s argument that the petition related  
to a new judgment.

After various additional proceedings in the district court, in March 2013 a  
magistrate judge issued a report: (1) finding that the § 2254 petition related to a new  
judgment; and (2) recommending that the petition be denied under the “abuse-of-the-writ  
doctrine” and because it was time-barred. In November 2013 the district judge issued an  
amended order adopting in part the magistrate judge’s report and recommendation. The  
order declined to adopt the conclusion that the petition related to a new judgment, and it  
dismissed the § 2254 petition for lack of jurisdiction. Alternatively, the order denied the  
petition for abuse of the writ and dismissed it as time-barred.

Complainant appealed and filed an application for a certificate of appealability  
(COA), and the district court granted him a COA as to one issue. In February 2015 a  
panel of this Court that did not include the Subject Judge vacated the COA and remanded

to the district court to consider whether Complainant had made a substantial showing of the denial of a constitutional right.

After that, the district court issued an order concluding that a COA should not issue because Complainant had not made a substantial showing of the denial of a constitutional right. In the alternative, the court concluded that the § 2254 petition was due to be denied because Complainant had abused the writ and because it was time-barred. Complainant appealed. In December 2015 a panel of this Court that included the Subject Judge denied Complainant's application for a COA, stating that the panel could not say that reasonable jurists would find the district court's assessment of Complainant's jurisdictional claim debatable or wrong. Complainant filed a motion for reconsideration, which the panel denied.

### Complaint

As part of his Complaint of Judicial Misconduct or Disability, Complainant submitted a Fed. R. Civ. P. 60(b) motion in which he asserts that the Subject Judge should have recused himself from Complainant's appeal "as a direct result of being a State Agent at \_\_\_\_\_ office" during Complainant's first "appellate process." Complainant contends that recusal was required because: (1) the Subject Judge had a bias against Complainant that stemmed from an extrajudicial source; (2) the Subject Judge had personal knowledge of disputed evidentiary facts concerning the proceedings; (3) the Subject Judge's previous position gave rise to "deep seated favoritism to the State's allegiance, or antagonism that would make fair judgments impossible"; and (4) a reasonable person would entertain significant doubts about the Subject Judge's impartiality. (Emphasis in original).

Complainant states, "Questions of ethical improprieties and conflicting interest[']s - allegiance to the government whom previously employed [the Subject Judge] - remain forever etched in the rubric fabric of [Complainant's] ancillary proceedings - thus giving rise towards the integrity of judiciary [sic] having been placed in compromise, therein." He attached 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.* (emphasis added). 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 and orders entered in Complainant’s appeal, including his decision not to recuse, 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 allegations that the Subject Judge was biased against Complainant, had a conflict of interest, 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**.

  
\_\_\_\_\_  
Chief Judge