

**CONFIDENTIAL**

**FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT**

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

**JUL 02 2018**

**David J. Smith  
Clerk**

**Judicial Complaint No. 11-18-90029**

**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 September 2003 a jury found Complainant guilty on two counts of a superseding indictment. At a sentence hearing in December 2003, the Subject Judge initially found that Complainant was not able to pay a fine and stated that no fine would be imposed. However, the Subject Judge later noted that the court was ordering a fine and stated, “I would think that a \$10,000 fine over 30 years in prison would not be unreasonable.” The Subject Judge then issued a judgment sentencing Complainant to a total term of 360 months of imprisonment and imposing a \$10,000.00 fine. On appeal, this Court affirmed, holding, among other things, that the district court did not clearly err in imposing a \$10,000 fine.

After various additional proceedings, in August 2016 the government filed a “Motion to Apply Funds in Defendant’s Bureau of Prison Trust Account Towards Outstanding Criminal Fine Judgment,” arguing that \$3,097.08 in Complainant’s trust account should be applied toward the criminal fine. The next month, the Subject Judge granted the motion and directed the U.S. Bureau of Prisons to turn over \$3,097.08 to be applied towards Complainant’s outstanding criminal fine. Complainant filed a motion for reconsideration, which the Subject Judge denied. Complainant also appealed, and this Court later affirmed the district court’s order granting the government’s motion. In October 2017 Complainant filed a Fed. R. Civ. P. 60(b) motion for relief from judgment in which he argued that he should not be subject to a fine because, at sentencing, the court orally pronounced that no fine would be imposed. Later that month, the Subject Judge denied the Rule 60(b) motion.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that at his sentence hearing in 2003, the Subject Judge orally pronounced that no fine would be imposed, but that after sentencing, the Subject Judge imposed a \$10,000 fine. He states that “in light of the oral judgment the Rule of Lenity should apply” in his favor. Complainant then contends that the Subject Judge, in her September 2016 order granting the government’s motion to apply funds towards the criminal fine, “ruled against her own order,” which stated that no fine would be imposed and that he “had 30 years to pay off the fine.” Complainant also contends that the Subject Judge ordered the Bureau of Prisons to turn over an amount “well over the amount owed on the \$10,000 fine.” He states, “This Judicial behavior is outlandish and down right unfair and deserve[s] Judicial review.” 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.* 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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in Complainant’s case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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