#### CONFIDENTIAL

### BEFORE THE ACTING CHIEF JUDGE OF THE ELEVENTH JUDICIAL CIRCUIT

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 21 2021

David J. Smith
Clerk

Judicial Complaint No. 11-21-90123

IN THE MATTER OF A COMPLAINT FILED BY
IN RE: The Complaint of against United States Circuit Judge
of the United States 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.
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").
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 March 2019 an individual filed a voluntary petition for Chapter 13 bankruptcy. In August 2019 Complainant filed an amended adversary complaint against the debtor and two companies, generally alleging the defendants were part of a criminal enterprise. After various proceedings, Complainant filed a second amended complaint, and in April 2020 the bankruptcy judge issued an order that, among other things, stated the court was abstaining from the adversary proceeding. Complainant then filed a notice of appeal, and in November 2020 the district court issued an order affirming the order abstaining from the adversary proceeding.

Complainant appealed to this Court, and in July 2021 a two-judge panel that did not include the Subject Judge issued an order dismissing the appeal for lack of jurisdiction to the extent Complainant challenged the Subject Judge's decision to abstain and carrying with the case other issues Complainant raised on appeal. In November 2021 a panel of this Court that included the Subject Judge dismissed the appeal for lack of jurisdiction and denied as moot motions Complainant had filed. In the opinion, the panel noted that it could not review the bankruptcy court's decision to abstain.

## Previous Judicial Complaint

In July 2021 Complainant filed a Complaint of Judicial Misconduct or Disability against the bankruptcy judge from the above-described case, No. \_\_\_\_\_\_, alleging in part that the bankruptcy judge engaged in an improper ex parte communication by sending a certain email in connection with the case. In September 2021 the Subject Judge issued an order dismissing the complaint as directly related to the merits of the bankruptcy judge's decisions or procedural rulings, and as based on allegations lacking sufficient evidence to raise an inference that misconduct had occurred or a disability existed. Complainant filed a petition for review, and the Judicial Council Review Panel affirmed the dismissal of the complaint and denied the petition for review.

# **Instant Judicial Complaint**

In the instant Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge was aware Complainant's previous judicial complaint was not based on the bankruptcy judge's rulings and that it was a "legal impossibility" for him to challenge an order issued by the bankruptcy judge. He alleges the Subject Judge: (1) "deliberately raised this issue to absolve [the bankruptcy judge] of her misconduct"; (2) lied, committed fraud, and deliberately misstated that he challenged an order to protect the bankruptcy judge and others and to cover up judicial misconduct; (3) engaged in a "continuing criminal enterprise" to ensure those who give political contributions get away with their crimes; and (4) aided a bank in committing crimes and fraud on the court.

# <u>Supplement</u>

In his supplemental statement, Complainant asserts that the Subject Judge lied, committed fraud, was part of a "conspiracy to further destroy" Complainant for filing judicial complaints, and covered up the bankruptcy judge's misconduct. Complainant alleges the Subject Judge dismissed his appeal of the bankruptcy court's orders in retaliation for him having filed a judicial complaint against the bankruptcy judge, and he asserts that, in this Court's opinion, the Subject Judge deliberately misstated that he could not appeal the bankruptcy judge's abstention order when he was not appealing the decision to abstain. Finally, he states the Subject Judge was not permitted to rule on the appeal when he had "organized the cover-up of misconduct" by the Subject Judge.

#### **Discussion**

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

In addition, the "Commentary on Rule 4" provides:

The phrase "decision or procedural ruling" is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint — even though it does not concern the judge's rulings in Article III litigation.

To the extent Complainant's allegations concern the substance of this Court's opinion dismissing Complainant's appeal and the Subject Judge's order dismissing his previous Complaint of Judicial Misconduct or Disability, 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 illicit or improper motive, lied, committed fraud, covered up misconduct, retaliated against Complainant, was part of a conspiracy, 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**.

	/s/ Charles R Wilson
December 21, 2021	
	Acting Chief Judge