

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

**111690056**

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

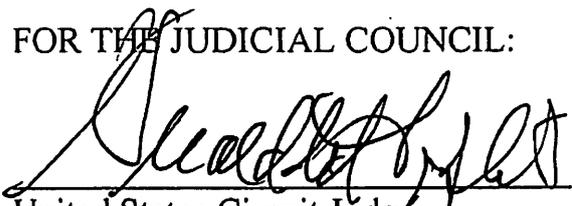
\_\_\_\_\_  
ON PETITION FOR REVIEW\*  
\_\_\_\_\_

Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Bowdre, and Land, the order of Chief Judge Ed Carnes filed on 14 October 2016, and of the petition for review filed by the complainant on 17 November 2016, 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 Chief District Judge Rodgers did not take part in the review of this petition.

OCT 14 2016

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90056**

**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”).

Background

The record shows that in November 2015 in \_\_\_\_\_, a final judgment issued by  
United States District Judge \_\_\_\_\_ of the United States District Court for the  
\_\_\_\_\_ District of \_\_\_\_\_ in favor of two plaintiffs and against Complainant and  
another defendant was registered in the United States District Court for the \_\_\_\_\_  
District of \_\_\_\_\_. After that, the defendants filed motions to vacate the judgment. In  
early May 2016 the Subject Judge issued a report recommending, among other things,  
that the motions to vacate be denied.

The record shows that on May 24, 2016, in \_\_\_\_\_, Complainant appeared  
before the Subject Judge on a warrant issued by the United States District Court for the  
\_\_\_\_\_ District of \_\_\_\_\_ for her failure to appear. On the same day, the Subject  
Judge entered an order directing Complainant to appear before Judge \_\_\_\_\_ in the  
\_\_\_\_\_ District of \_\_\_\_\_ for a contempt hearing on June 10, 2016. Attached to the  
Subject Judge’s order was a March 2016 order from Judge \_\_\_\_\_ transferring a  
warrant for Complainant’s arrest to the \_\_\_\_\_ District of \_\_\_\_\_ for execution.  
Also attached was a Warrant for Arrest signed by the Subject Judge on April 21, 2016,  
directing that Complainant be arrested for her failure to appear at a contempt hearing on  
March 1, 2016. On June 13, 2016, Complainant filed a “Motion to Quash Arrest Warrant  
and Motion to Seal” in which she argued that the Subject Judge’s arrest warrant was  
“malicious and void” and was used to intimidate, threaten, and coerce her, and she

alleged that the Subject Judge granted a “favor” to Judge \_\_\_\_\_ and violated her constitutional rights.

Meanwhile, on June 6, 2016, in \_\_\_\_\_, Complainant filed a motion to vacate the Subject Judge’s May 24, 2016 order in the other case directing her to appear, arguing in part that the warrant signed by the Subject Judge was void and malicious and that he lacked jurisdiction to order her to appear in the \_\_\_\_\_ District of \_\_\_\_\_. On June 9, 2016, a district judge adopted the Subject Judge’s report and recommendation in principal part and denied the defendants’ motions to vacate the judgment. The district judge also denied Complainant’s motion to vacate the Subject Judge’s order directing her to appear before Judge \_\_\_\_\_, finding that her arguments regarding the Subject Judge’s authority to issue such an order were without merit and her citations to state statutes were inapplicable.

In July 2016 in \_\_\_\_\_, the Subject Judge denied Complainant’s motion to quash and seal, finding that the motion to quash was moot because the warrant already had been executed, noting that the district judge had already considered many of the Complainant’s arguments in addressing her motion in the related action, and concluding that her arguments were meritless. The docket sheet also shows that in late June 2016, the Subject Judge signed a warrant for Complainant’s arrest due to her failure to appear at the contempt hearing on June 10, 2016. On July 7, 2016, Complainant appeared before the Subject Judge on a failure-to-appear warrant from the \_\_\_\_\_ District of \_\_\_\_\_, and after a hearing, the Subject Judge entered an order removing her to that district.

**Complaint**

In her Complaint of Judicial Misconduct or Disability, Complainant first sets out an exchange she had with the Subject Judge at her May 24, 2016 appearance, noting that the Subject Judge stated: “I’ve just spoken with Judge \_\_\_\_\_ in the \_\_\_\_\_ District of \_\_\_\_\_ and he tells me, he has set a hearing for June 10, 2016 at 12:30. He and I are inclined to release you if you will agree to appear on your own at that hearing.” After Complainant stated that she would attend that hearing, the Subject Judge told her “make sure you attend that hearing or you will be in contempt of this court and rearrested.” Complainant alleges that she was “not sworn in, told the charges, or afforded an opportunity to be fairly and fully heard” during that proceeding, and that the Subject Judge threatened her with imprisonment if she did not agree to appear before Judge \_\_\_\_\_.

Complainant then describes the circumstances of her arrest, incarceration, and appearance before the Subject Judge. She argues that she was arrested “on the malicious and void arrest warrant issued by” the Subject Judge, and she contends that the warrant was invalid, there was no oath, and the Subject Judge never instructed her to appear at the

March 1, 2016 contempt hearing. Complainant states, “It should be without argument, Judge \_\_\_\_\_ ‘called in a favor’ of [the Subject Judge] to, no doubt, to put the fear of God in me in an effort to quash my pleas and prayers for relief . . . .” Complainant asserts that the Subject Judge violated her constitutional rights by “granting that ‘favor,’” issuing a warrant without probable cause, “orchestrating the false arrest and illegal” detention, and conducting a “purported” contempt hearing where she was not afforded various rights.

Complainant alleges that, in addition to the “flagrant civil rights violations,” the Subject Judge violated various provisions of the state “Code of Judicial Conduct.” She asserts that the Subject Judge: (1) exhibited a “lack of competence”; (2) “demonstrated disregard for \_\_\_\_\_ Code/Law”; (3) displayed bias or prejudice against her; (4) “engaged in the ongoing harassment and retaliation efforts of” Judge \_\_\_\_\_; (5) “permitted others, to include himself, to manifest bias and prejudice, harass and threaten” her; and (6) “brought the judiciary into disrepute.”

Complainant then alleges that by “communicating with Judge \_\_\_\_\_, ex parte, [the Subject Judge] displayed no faithfulness to the law and/or professional competence. He was swayed by the malicious interest of Judge \_\_\_\_\_. [The Subject Judge] conveyed a clear message that a fellow judge in a separate court is in a position to influence him and his judicial decisions.” Finally, Complainant contends that the Subject Judge “did not require order and decorum in the arrest he initiated or in the proceedings over which he preside[d],” the circumstances of her arrest constituted “a gross abuse of his judicial authority and the law,” and he did not treat her with patience, dignity, and courtesy. She attached various documents to her 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.

Canon 3A(4) of the Code of Conduct for United States Judges provides in part, “a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers,” with certain exceptions. Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 3A(4). The “Commentary” to Canon 3A(4) provides in part, “The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.” Id. cmt.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, arrest warrants, report, and orders entered in the cases, 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, she provides no credible facts or evidence in support of her allegations that the Subject Judge acted with an illicit or improper motive, was biased or prejudiced against her, exhibited a lack of competence, engaged in improper ex parte communications, 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