

APR 11 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-16-90126**

**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 on July 31, 2002, an arrest warrant was issued pursuant to a  
criminal complaint, and Complainant was arrested on the same day. On August 8, 2002,  
a federal grand jury issued an indictment charging Complainant and multiple  
codefendants with various drug-related offenses. After various proceedings, in February  
2003 the government dismissed the counts against Complainant.

In a separate case, in November 2002 Complainant was charged by information on  
one count of conspiracy to possess with intent to distribute and to distribute 3.5 to 5  
kilograms of cocaine, and he pleaded guilty to the charge the next day. In February 2003  
the district judge sentenced Complainant to a term of 240 months of imprisonment, and  
he was later resentenced to a term of 215 months of imprisonment. He then sought  
habeas relief.

The record also shows that in January 2003 the government filed a Verified  
Complaint for Forfeiture In Rem, seeking the forfeiture of over \$18,000 seized from  
Complainant’s bank account and stating that it had probable cause to believe the money

represented proceeds of illegal activity. In July 2003 Complainant filed a Verified Statement of Claim, generally arguing that the money was not subject to forfeiture. After various proceedings, in July 2005 the government filed a motion to dismiss the action, and the district judge granted the motion and directed that the money be returned to Complainant.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that after he was arrested but before he was indicted, government agents seized a certain amount of money from his personal bank account, and the Subject Judge “did not provide a hearing after the seizure of the funds pursuant to 21 U.S.C. [§] 853(e)(1)([B]) a law written by Congress.” Complainant states that the Subject Judge “committed ‘fraud on the court’ by the failure to provide that mandatory hearing as enacted by Congress.” He asserts, “Clearly, it affected the judicial machinery of the case and was intentionally false and reckless disregard of the truth by the Judge.” Complainant attached documents to his Complaint.

### Supplement

In his supplemental statement, Complainant reiterates his allegation that the Subject Judge “did not provide a hearing as mandated by Congress,” and he states that documents he provided show that funds were seized before he was indicted. Complainant also asserts that a government agent committed perjury. He attached various documents to his supplement.

### 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, and orders entered in the cases, including not holding a hearing that Complainant believes was required, 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 committed fraud, acted with an illicit or improper motive, 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**.

A handwritten signature in black ink, appearing to read "E. K. Hamer", is written over a horizontal line.

Chief Judge