

NOV 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90025**

**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 July 2016 Complainant filed a *pro se* civil rights complaint against multiple defendants raising various allegations. On the complaint form, he indicated that he had not initiated other lawsuits in federal court relating to his imprisonment or the conditions of his imprisonment. After that, a magistrate judge entered an order noting that Complainant failed to mention his numerous other federal cases concerning his imprisonment or conditions of imprisonment. The order directed Complainant to show cause why the case should not be dismissed for abuse of the judicial process. Complainant later filed a response in which he generally argued that he did not understand that he was expected to list his previous cases.

In October 2016 the Subject Judge entered an order dismissing the case without prejudice as malicious and an abuse of the judicial process, pursuant to 28 U.S.C. § 1915(e)(2)(B). The Subject Judge found that Complainant failed to divulge seven federal cases relating to his imprisonment or the conditions of his confinement, and that his arguments in response to the show cause order were not persuasive. Complainant filed a motion to alter or amend the judgment or for reconsideration, which the Subject Judge denied. He also filed a notice of appeal, and this Court clerically dismissed the appeal for want of prosecution.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge's October 2016 dismissal order, and he states that "Judicial Bribery, Bias, Bigotry and General Mis-Conduct are the chief concerns meriting" the filing of his Complaint. Complainant states that "evidence indicates that [the Subject Judge] facilitated his Judicial authority Conspiratorially, abusively, biasely and maliciously by dismissing [Complainant's] meritorious petition via the Employing of Subterfuge applications of law."

Complainant also states that "said Judicial Officials" have "grossly abuse[d] and misuse[d]" the screening procedures under the Prison Litigation Reform Act to "covertly sabotage, obstruct, and ultimately dismiss" indigent pro se litigants' meritorious complaints. Finally, he takes issue with the finding that he abused the judicial system, stating that he merely failed to recall his previously filed cases. He attached various 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.

To the extent Complainant's allegations concern the substance of the Subject Judge's findings and orders entered in the case, 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 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