

NOV 21 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90027**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Circuit Judge for the U.S. 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.

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**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 her Complaint, she filed two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

**Background**

The record shows that in July 2011 \_\_\_\_\_ filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging his state court murder conviction and death sentence, and he later filed an amended petition. After various proceedings, in January 2015 the district court denied \_\_\_\_\_ original and amended § 2254 petitions, finding that his claims were procedurally barred or that he otherwise was not entitled to relief. After that, \_\_\_\_\_ filed a “Motion to Excuse Procedural Defects,” which the district court denied. He then filed a notice of appeal.

In October 2016 \_\_\_\_\_ filed in this Court a motion for a certificate of appealability (COA) raising various arguments. In February 2017 a panel of this Court that included the Subject Judge denied \_\_\_\_\_ motion for a COA, holding that he had failed to make a substantial showing of the denial of a constitutional right. In March 2017 a motion \_\_\_\_\_ had submitted was returned to him unfiled because the case was closed. Later in March 2017, \_\_\_\_\_ filed a motion seeking, among other things, reconsideration of the order denying him a COA, and the panel denied the motion in April 2017.

## Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge is biased against death-row inmates and “4th Amendment claims,” that he failed to disclose photographs, and that he engaged in “alleged Racketeering.” Complainant asserts that the Subject Judge’s “misconduct has caused severe Constitutional harm to Florida Death row inmate \_\_\_\_\_” and “has prejudiced the business of the courts.”

With respect to Complainant’s allegation that the Subject Judge is biased against death-row inmates, Complainant discusses a blog post, which was posted by someone else about the Subject Judge’s judicial decisions. Complainant alleges that the Subject Judge is biased against \_\_\_\_\_ based on that post’s “statistical analysis” and is prejudiced against \_\_\_\_\_ Fourth Amendment claims. Complainant notes that the Subject Judge denied \_\_\_\_\_ a COA and asserts that he abused his discretion by returning \_\_\_\_\_ motion for reconsideration unfiled.

Complainant makes scurrilous and unsubstantiated allegations about some photographs on a website that she alleges are photographs of the Subject Judge. Complainant makes various allegations of wrongdoing arising from her unsupported contention that the Subject Judge is the person in the photographs.

Complainant goes on to challenge what she believes are the Subject Judge’s views on capital punishment and the Fourth Amendment, asserting that the Subject Judge has conflicts of interest. Complainant takes issue with the Subject Judge’s confirmation process and alleges that the Subject Judge has a conflict of interest involving a former senator. She speculates without any supporting evidence that the Subject Judge could be susceptible to blackmail.

Complainant alleges that the Subject Judge violated multiple canons of the Code of Conduct for United States Judges. She requests: (1) that the Subject Judge recuse himself from \_\_\_\_\_ case; (2) that the convicted murderer \_\_\_\_\_ be granted freedom, en banc review, or a new trial; and (3) that the Senate investigate the Subject Judge.

Complainant attached various documents to her Complaint.

## Supplements

After she filed her Complaint, Complainant filed two supplemental statements. With the supplements, she included additional documents.

## 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.

Rule 4 provides, “A complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s orders entered in \_\_\_\_\_ appeal, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s scurrilous and unsupported allegations about photographs that are allegedly of the Subject Judge before he became a federal judge are not cognizable under the Judicial Conduct and Disability Act. In addition, that claim and Complainant’s other claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge is biased against death-row inmates, is biased against Fourth Amendment claims, is biased against \_\_\_\_\_ individually, engaged in racketeering, had a conflict of interest, has been or may be subjected to blackmail, is not impartial, violated the Code of Conduct, or otherwise engaged in any misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), 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), and the Complaint is “otherwise not appropriate for consideration under the Act,” JCDR 11(c)(1)(G). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii), and Rule 11(c)(1)(B), (D), and (G) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**. The dismissal of the allegations about the photographs as not appropriate for consideration under the Act in no

way implies that the Subject Judge appeared in the alleged photographs or otherwise engaged in any misconduct before becoming a judge.

A handwritten signature in cursive script, appearing to read "J. James", written in black ink.

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Chief Judge