

NOV 01 2017

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90028**

**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 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 raising additional claims. After various proceedings, in January 2015 the Subject Judge denied \_\_\_\_\_ original and amended § 2254 petitions, finding that his claims were procedurally barred or that he otherwise was not entitled to relief. \_\_\_\_\_ then filed, among other things, a “Motion to Excuse Procedural Defects Pursuant to *Martinez v. Ryan*,” in which he alleged that his post-conviction counsel had been ineffective for failing to take certain actions.

In July 2016 the Subject Judge entered an order denying the motion, generally finding that \_\_\_\_\_ did not establish that he was entitled to relief on his claims. The Subject Judge later denied a motion to alter or amend the judgment that \_\_\_\_\_ had filed. \_\_\_\_\_ filed a notice of appeal and moved in this Court for a certificate of appealability (COA). In February 2017 this Court denied \_\_\_\_\_ motion for a COA, holding that he had failed to make a substantial showing of the denial of a constitutional right.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge’s orders denying \_\_\_\_\_ relief, alleging that he

engaged in misconduct that “caused severe Constitutional harm” to \_\_\_\_\_. Complainant asserts that the Subject Judge engaged in and did not disclose *ex parte* communications about the State’s alleged blocking of \_\_\_\_\_ access to the courts and conspiracy to interfere with his civil rights, and she notes that she mailed the Subject Judge a document raising that issue.

Complainant alleges that the Subject Judge’s law clerk was biased in favor of the government because the law clerk had stated that she was considering becoming a federal prosecutor someday. Complainant asserts that the law clerk “negatively influenced” the Subject Judge in \_\_\_\_\_ case. Finally, Complainant contends that the Subject Judge violated the Code of Conduct for United States Judges. She requests that the Subject Judge’s orders in the case be “purged” and that convicted murderer \_\_\_\_\_ be released or given a new trial. 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders entered in \_\_\_\_\_ 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, she provides no credible facts or evidence in support of her claims that the Subject Judge engaged in or failed to disclose improper *ex parte* communications, was biased, was “negatively influenced” by his law clerk, violated the Code of Conduct, 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