

MAR 19 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90057**

**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 his Complaint, he filed five  
supplemental statements. The filing of the supplemental statements is permitted. See  
11th Cir. JCDR 6.7.

**Background**

The record shows that in July 2013 a jury found Complainant guilty of various  
crimes, including theft of government property, aggravated identity theft, and conducting  
an unlawful monetary transaction. In October 2013 the district court sentenced him to a  
total term of 102 months of imprisonment and imposed restitution. This Court affirmed  
Complainant’s convictions and sentences, holding in part that the district court did not err  
at sentencing in determining the amount of loss or the number of victims.

In December 2015 Complainant filed an amended 28 U.S.C. § 2255 motion to  
vacate, set aside, or correct sentence in which he argued, among other things, that the  
district court improperly determined the amount of loss at sentencing. In July 2016 the  
district court denied the § 2255 motion, finding that Complainant’s claims either had  
been decided against him by this Court, were not cognizable, had been procedurally  
defaulted, or lacked merit. The district court also denied Complainant a certificate of  
appealability (COA). Complainant filed a motion for relief from judgment under Fed. R.  
Civ. P. 60, which the district court denied. Complainant appealed.

In February 2017 the Subject Judge entered an order denying Complainant's construed motion for a COA, holding that he failed to make the requisite showing. The order stated in part that the district court correctly found that Complainant's arguments regarding loss and restitution amounts were not cognizable in a § 2255 proceeding and as a result were procedurally defaulted. Complainant filed a motion for reconsideration, and a two-judge panel that included the Subject Judge denied the motion, determining that Complainant presented no new evidence or arguments of merit to warrant relief.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge exhibited racial bias, and he later states he "feels as though" the Subject Judge is biased against him. Complainant contends that the Subject Judge's order denying him a COA conflicted with the Subject Judge's ruling in another appeal with respect to whether the Mandatory Victims Restitution Act applied. He states he is filing his Complaint "on the grounds of racial inequality and the Judge hates minorities," and he alleges that the Subject Judge "hates African American people." Complainant also states that the Subject Judge "refused to rule on the specific facts" of his case.

### Supplements

Complainant's supplemental statements include case-related documents and newspaper articles, which he contends support the conclusion that the Subject Judge or the "federal system" shows "favoritism to certain people" and is "unfair to minorities," and that the Subject Judge "hates" Complainant.

### 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 orders entered in Complainant's appeal, 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 is racially biased, had a personal bias against Complainant, 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