

FEB 02 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90064**

**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”).

Background

The record shows that in April 2017 Complainant filed two 28 U.S.C. § 2241 petitions for writ of habeas corpus raising various claims arising out of his incarceration. In May 2017 he filed in each case a “Motion to Dismiss Without Prejudice” in which he took issue with the actions of the court clerk. He also included certain demands and stated, among other things, “one wrong move and it’s all over but the dieing [sic].”

The same day, the Subject Judge entered in each case an “Order Regarding Threatening Statements,” construing Complainant’s statements in the motion to dismiss as threats to harm himself or others and directing the clerk to transmit a copy of the motion to the warden of the institution where Complainant was confined. The next day, the Subject Judge denied Complainant’s motions to dismiss. After that, Complainant filed an amended § 2241 petition in each case, and the warden filed a response. The Subject Judge then entered an order stating that any further offensive or threatening filings by Complainant would be summarily stricken from the record and could result in the imposition of sanctions.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that in each of the two cases described above, the Subject Judge conducted “ex parte

proceedings with Respondent to prejudice the case against” him. He alleges that the Subject Judge acted intentionally to injure Complainant in those cases and “in every case hereafter.” Complainant notes that the Subject Judge is the magistrate judge in other cases that he filed, and he states that the Subject Judge “has also performed the similar acts in” two other cases. He requests, among other things, that the Subject Judge be removed from his cases.

### 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, 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 claims that the Subject Judge engaged in improper ex parte communications 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