

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-17-90065**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

APR 04 2018

David J. Smith  
Clerk

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

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IN RE: The Complaint of \_\_\_\_\_ and \_\_\_\_\_ 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**

\_\_\_\_\_ and \_\_\_\_\_ (“Complainants”) have 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”).

As an initial matter, after Complainants filed their Complaint, they filed three  
supplemental statements. The filing of the supplemental statements is permitted. See  
11th Cir. JCDR 6.7.

**Background**

The record shows that in April 2017 Complainants filed a lawsuit against multiple  
defendants, raising claims under the Racketeer Influenced and Corrupt Organizations  
(RICO) Act and alleging predicate acts of copyright infringement. The case initially was  
assigned to a district judge who is not the Subject Judge. In May 2017 certain defendants  
filed a motion to reassign the case, arguing that it was related to an earlier case \_\_\_\_\_  
had filed and over which the Subject Judge presided. After that, Complainants filed  
multiple motions seeking entry of default against the defendants, one defendant filed a  
motion to dismiss for lack of personal jurisdiction, and the remaining defendants filed  
answers to the complaint and asserted counterclaims against Complainants.

Some of the defendants filed a “Motion to Quash Service of Process and Returns  
of Service,” arguing that Complainants had failed to properly serve them. Complainants  
sought to strike that motion and the previously filed motion to dismiss. In June 2017 they  
filed a motion for judgment on the pleadings and for summary judgment. Later that  
month the presiding judge entered an order granting the motion to reassign the case and

transferring the case to the Subject Judge. Several days later, some of the defendants filed a motion for judgment on the pleadings.

In late June 2017 the Subject Judge entered an order noting the case was a “pro se civil RICO action” and granting the defendants’ motion to quash, finding that Complainants had not properly served any of the defendants. The Subject Judge also found that Complainants’ motion to strike was “largely incomprehensible” and denied it. Complainants then filed Document \_\_\_\_\_ in which they sought reconsideration of the Subject Judge’s order and to recuse the Subject Judge for being biased and prejudiced against them. Complainants generally argued that they had properly served the defendants and that the “[d]efaults are proper and should be restored against the Defendants.”

In July 2017 Complainants filed an amended complaint in which they named the Subject Judge as a defendant. The defendants filed a motion to stay the proceedings until the court ruled on their motion for judgment on the pleadings and motion to dismiss. They also filed a motion for a protective order, to stay discovery, and to modify the discovery period. The Subject Judge entered an order granting the defendants’ motion to stay and motion for a protective order, stating that Complainants had filed 69 documents in the case “each with little or no basis in fact or law or relevance, or which are otherwise unintelligible.” The Subject Judge also denied Complainants’ motion to recuse, generally finding that his impartiality could not reasonably be questioned and stating that \_\_\_\_\_ “is obviously a disappointed litigant.” Complainants appealed, and this Court later dismissed the appeal for lack of jurisdiction.

In August 2017 the United States Attorney filed a motion to dismiss on behalf of the Subject Judge. After that, Complainants filed multiple motions seeking various types of relief, including another motion to recuse the Subject Judge. In October 2017 the Subject Judge issued orders denying, among other things, Complainants’ motion for reconsideration (Document \_\_\_\_\_) and motion for judgment on the pleadings and for summary judgment. The Subject Judge also denied Complainants’ second motion for recusal, finding that their unhappiness with his rulings “in this and other cases” was not a valid basis for recusal.

The Subject Judge granted the United States Attorney’s motion to dismiss him from the case, finding that: (1) the amended complaint that purported to name him as a defendant was “an obvious ploy to have [him] recuse”; (2) the amended complaint was a nullity because Complainants did not obtain the defendants’ consent or a court order before filing it; (3) they failed to properly serve the United States Attorney; and (4) the Subject Judge had absolute judicial immunity from claims arising out of his rulings in an unrelated case.

The Subject Judge granted the motion to dismiss filed by one defendant. He also granted the remaining defendants' motion for judgment on the pleadings, finding that: (1) Complainants' claims of copyright infringement were barred by res judicata and collateral estoppel; (2) they failed to state a plausible claim of copyright infringement as a predicate act for a RICO claim; and (3) they failed to allege sufficient facts to support a plausible claim for relief as to their other claims. Complainants then filed in the district court a petition for writ of mandamus seeking to vacate the Subject Judge's orders. Later in October 2017, they filed a motion for reconsideration in which they alleged fraud upon the court and misconduct by the Subject Judge. In November 2017 the Subject Judge denied the petition for writ of mandamus and motion for reconsideration.

### Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants generally take issue with the Subject Judge's orders in the case, alleging that the orders: showed favoritism toward the defendants and prejudice against Complainants, denied them their "rights to defend their case," and violated the RICO Act, the United States Constitution, and others laws and rules. They also allege that the Subject Judge ignored the law and prohibited them from participating in the proceedings.

Complainants argue that the June 2017 order reassigning the case to the Subject Judge was inappropriate, and they assert that the defendants "sought after [the Subject Judge] because it was known through Ex-Parte communication that the Judge would take the case and dismiss the case regardless of the laws . . . ." Complainants contend that the defendants stated in a motion that Complainants did not need discovery because the judge was going to dismiss the case, which they state "is preemptive pre-planned and appears to be Ex-Parte communication" between the Subject Judge and the defendants.

Complainants discuss the merits of their lawsuit, argue that the defendants were in default and failed to defend the charges against them, and assert that the Subject Judge "did not review the service of process when he pulled the Defendants out of Default." Complainants object to certain orders because the Subject Judge "signed and denied his own recusal Orders and ruled on motions while included as a Defendant of the current case."

Complainants also take issue with the Subject Judge's statements that: (1) \_\_\_\_\_ was "an unhappy litigant," arguing it implied that she was "the only person litigating on the case," which "proves the Judge is prejudice[d] and plans to rule against" them; (2) "he had a number of cases before him," arguing the statement was "perjurious [sic]" as \_\_\_\_\_ "only had one case"; and (3) the case was a "Pro Se Civil Rico" case, arguing the statement showed that he was prejudiced against them as pro se litigants. They also argue that the Subject Judge made a prejudiced statement by exaggerating the

number of motions they filed in the case. Complainants request that the case be reassigned to a different judge.

### Supplements

In their first supplement, Complainants request that this Court reassign their case to a different district judge or court due to the Subject Judge's alleged conflict of interest as a named defendant in the case. They also contend that the district court's orders were ineffective because they were "not sealed, signed and submitted to the clerk."

Complainants' second supplement consists of the October 2017 motion for reconsideration they filed in the district court. In that motion, they generally challenge the Subject Judge's orders and allege, among other things, that he committed a fraud upon the court and violated the Code of Conduct for United States Judges.

In Complainants' third supplement, they: (1) generally take issue with the Subject Judge's November 2017 order denying their petition for writ of mandamus and motion for reconsideration; (2) assert that a "bribe is more likely than not likely"; and (3) allege that the Subject Judge was biased in favor of the defendants.

### 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.* (emphasis added). 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 Complainants' allegations concern the substance of the Subject Judge's official actions, findings, and orders entered in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Some of Complainants' allegations pertain to the Subject Judge's decision not to recuse from the case after they named him as a defendant in their amended complaint. *See* 28 U.S.C. § 455(b)(5)(i) (stating in part that a judge "shall" disqualify himself when he "is a

party to the proceeding”); Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 3C(1)(d)(i) (same). In any event, the Subject Judge’s decision not to recuse himself and to grant the motion to dismiss himself from the case are merits-related decisions that do not constitute cognizable misconduct. See JCDR 3(h)(3)(A).

Complainants’ remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge engaged in improper ex parte communications, was biased against Complainants or in favor of the defendants, committed a fraud upon the court, violated the Code of Conduct for United States Judges, accepted a bribe, 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