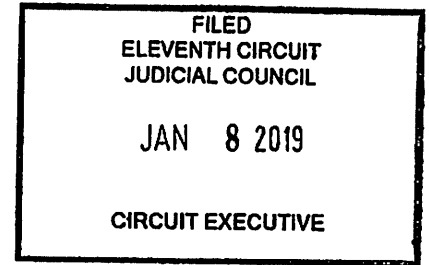


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**111890045**



**IN RE: COMPLAINT OF JUDICIAL  
MISCONDUCT OR DISABILITY**

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**ON PETITION FOR REVIEW\***

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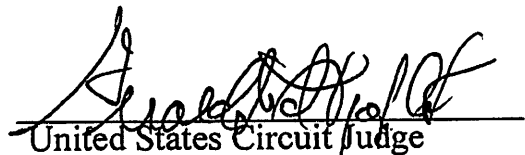
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 29 October 2018, and of the petition for review filed by the complainant on 13 November 2018, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

**FOR THE JUDICIAL COUNCIL:**

  
United States Circuit Judge

\* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 29 2018

David J. Smith  
Clerk

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

**Judicial Complaint No. 11-18-90045**

**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 August 2017 Complainant filed a lawsuit against three defendants, and he later moved to proceed in forma pauperis (IFP).<sup>1</sup> In September 2017 a magistrate judge granted Complainant’s IFP motion and directed him to file summonses with the court. A few months later, the magistrate judge issued a report recommending that the case be dismissed due to Complainant’s failure to timely serve process. Complainant then filed a document asking when a hearing would be set and when the defendants would be served.

In late January 2018 the Subject Judge entered an order adopting the magistrate judge’s report and recommendation and dismissing the case without prejudice for failure to timely serve process. After that, Complainant filed objections to the magistrate judge’s report and recommendations, motions seeking reconsideration, and a motion for a hearing. In May 2018 the magistrate judge entered an order denying the motions for reconsideration, generally finding that Complainant had not shown that he was entitled to the requested relief. The order denied the motion for a hearing as moot. After that, Complainant filed another motion for reconsideration.

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<sup>1</sup> In his Complaint of Judicial Misconduct or Disability, Complainant cites to \_\_\_\_\_; however, the Subject Judge did not participate in that case.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge dismissed his case “without Just Cause or Grounds to support His Decision.” He also states that the Subject Judge “did not investigate” whether the clerk’s office had informed him about required filing fees. He complains that the Subject Judge did not respond to certain motions. He states that the Subject Judge failed to schedule a hearing and notes that he was not provided with a lawyer in the case. Complainant alleges that the Subject Judge denied him due process. He attached various documents to his 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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) 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