

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

SEP 14 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-18-90060 through 11-18-90062**

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

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IN RE: The Complaint of \_\_\_\_\_ against U.S. Circuit Judges \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_ of 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 Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively the “Subject Judges”), 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 June 2016 an individual filed an application for leave to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside or correct sentence, raising challenges to his federal convictions. The next month, a panel comprised of the Subject Judges entered an order denying the application because it only restated a previously raised claim and challenged the previous rejection of that claim. (\_\_\_\_\_).

The record also shows that in January 2018 Complainant filed an application for leave to file a second or successive habeas corpus petition, arguing that a certain decision allowed him to file a new habeas petition after a certain time period. Later that month, a panel that included Judge \_\_\_\_\_ entered an order denying the application because Complainant failed to make a *prima facie* showing of the existence of either of the grounds set out in 28 U.S.C. § 2244(b)(2).

**Complaint**

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that his application to file a second or successive habeas petition was erroneously denied, and he argues, among other things, that this Court failed to follow its own precedent. He takes issue with the Subject Judges’ \_\_\_\_\_ decision. He asserts that several circuit court

judges “admit that the \_\_\_\_\_ decision was wrongly decided; but nevertheless adhere to its erroneous conception that it is powerless to revisit its own errors,” which he believes has resulted in his spending decades in prison for a crime he did not commit.

Complainant discusses other cases and generally contends that he is innocent of the crime of which he was convicted. He also raises allegations against individuals other than the Subject Judges. He attached various documents to his Complaint. In one document, Complainant alleges that the Subject Judges “devised a scheme” to deliberately suspend the writ of habeas corpus by selectively misreading a statute. In another document, Complainant appears to request the appointment of counsel.<sup>1</sup>

### 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 Judges’ findings and orders in the above-described matters, the allegations are directly related to the merits of the Subject Judges’ 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 Judges acted with an illicit or improper motive 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

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<sup>1</sup> Complainant’s request for the appointment of counsel is DENIED.

Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



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Chief Judge