BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-18-90065 and 11-18-90066

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____ and U.S. District Judge _____ of 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.

ORDER

_____ ("Complainant") has filed this Complaint against United States Magistrate Judge _____ and United States District Judge _____ (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 February 2018 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus in which he challenged the loss of "good time," and he also filed a supporting memorandum. The next month, Judge _____ entered an order dismissing the case without prejudice because Complainant failed to pay the filing fee or request to proceed in forma pauperis (IFP) within 30 days of the commencement of the case. The order stated that if Complainant decided to initiate a new case, he must pay the filing fee or request to proceed IFP within 30 days of the opening of that case. Complainant filed a motion for reconsideration, which Judge _____ denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the district court "prejudicially dismiss[ed]" his case before he was provided with the case number and a reasonable time to pay the fees. He states that the court informed him that he could refile the case and then pay the filing fee or move to proceed IFP, which he contends created a "clear manifest injustice," called the integrity of the court into question, and placed "unnecessary hurdles" before him as a pro se petitioner. Complainant asserts that the clerk should have informed him that his pleading was deficient, provided him with the appropriate forms, and given him time to either complete

the forms or pay the filing fee. Finally, he states that the court's actions possibly are keeping many inmates out of court "and thus must immediately be corrected."

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 Judge _____ official actions and orders entered in the case, the allegations are directly related to the merits of Judge _____ 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 Judges 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

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