

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. 11-18-90089

IN THE MATTER OF A COMPLAINT FILED BY _____

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.

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 April 2015 a federal grand jury issued a superseding
indictment charging _____ with multiple crimes. The case proceeded to trial, and the
jury found _____ guilty on various counts and not guilty on one count. The Subject
Judge later sentenced _____ to a term of imprisonment, and he appealed.

In March 2018 this Court issued an opinion affirming _____ convictions and
vacating his sentence. The case was remanded for resentencing before a different district
court judge. This Court held, among other things, that the Confrontation Clause was not
violated when the district court allowed law enforcement officers to testify at trial about
victim reports and allowed the testimony of victims’ parents. After that, there were
additional proceedings in the district court.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that
the Subject Judge “allowed copied, reimaged and manipulated evidence” at _____
trial, in violation of Federal Rule of Evidence 1002 and _____ due process rights.
Complainant notes that the defense attorney objected to the admission of certain evidence
at _____ trial, and the Subject Judge overruled the objection. Complainant also
contends that the alleged victims’ failure to testify at trial violated the Confrontation

Clause of the United States Constitution, Federal Rule of Evidence 802, and _____ due process rights. She attached various documents to her 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, rulings, and orders in _____ 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**.



Chief Judge