

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 30 2018

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-18-90095 and 11-18-90096**

**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 February 2018 Complainant filed an application for leave to file a second or successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, generally arguing that he was improperly sentenced under the Armed Career Criminal Act. The next month, a panel of this Court that included the Subject Judges dismissed in part and denied in part his application, holding that: (1) part of his claim was due to be dismissed because it was essentially the same claim he had presented in a previous application; and (2) to the extent he raised a new claim, the claim was not based on a new rule of constitutional law. A judge who is not one of the Subject Judges concurred in the result only, stating in part that Complainant’s sentence was unlawful.

**Complaint**

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judges’ ruling on his application to file a second or successive § 2255 motion, arguing that the ruling was contrary to binding precedent and was not a “sound” judgment. He alleges that the Subject Judges violated his: (1) constitutional right to equal protection by treating one of his state court convictions differently from the way it was treated for others; and (2) due process rights by requiring him to serve an unconstitutional sentence.

Complainant alleges he can demonstrate that the Subject Judges engaged in biased decision making, and that they are committing “ethical violations” and “blatantly refusing to administrating [sic] justice or protect the Constitution.” He states that the judge who concurred only in the result “admits” that he is serving an unconstitutional sentence. He attached 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.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ order ruling upon his application to file a second or successive § 2255 motion, 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 were biased against him 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