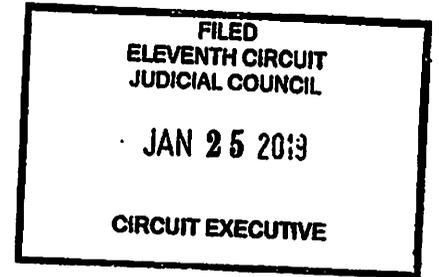


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**11-18-90107**



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

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**ON PETITION FOR REVIEW\***

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

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Marcus, William Pryor, Watkins, and Land, 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, Judge Charles R. Wilson, Judge Robin S. Rosenbaum, and Chief District Judge Mark E. Walker did not take part in the review of this petition.

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 29 2018

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

David J. Smith  
Clerk

**Judicial Complaint No. 11-18-90107**

**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 June 2011 Complainant filed a second amended 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions and arguing, among other things, that he was being held pursuant to a void judgment. In April 2012 a magistrate judge issued a report recommending that Complainant’s petition be denied, generally finding that he did not establish he was entitled to relief. Over Complainant’s objections, in May 2012 the Subject Judge adopted the report and recommendation and denied Complainant’s second amended § 2254 petition. Complainant filed a motion to alter or amend the judgment, which the Subject Judge denied. This Court later denied Complainant’s motion for a certificate of appealability (COA).

In October 2016 Complainant filed an amended 28 U.S.C. § 2241 petition for writ of habeas corpus in which he argued that the state and federal courts had suspended the writ of habeas corpus and that the Subject Judge and a magistrate judge had engaged in and covered up fraud. Later that month, a magistrate judge issued a report recommending that the amended petition be dismissed because Complainant’s claim was not cognizable on federal habeas review. In November 2016 the Subject Judge entered an order adopting the report and recommendation and dismissing the amended petition.

In April 2017 Complainant filed a § 2241 petition generally challenging his state court sentences and arguing that two of his expired terms of imprisonment

unconstitutionally impacted his third term. A couple of months later, a magistrate judge issued a report recommending that the § 2241 petition be dismissed for lack of jurisdiction, finding it was an unauthorized second or successive § 2254 petition. In July 2017 the Subject Judge adopted the report and recommendation and dismissed the petition. Complainant filed a motion to alter or amend the judgment, which the Subject Judge denied. In January 2018 this Court issued an order: (1) denying Complainant's motion for a COA as unnecessary; and (2) denying his motion to proceed in forma pauperis because he did not have a non-frivolous issue on appeal. After that, Complainant's appeal was clerically dismissed for want of prosecution.

In August 2017 Complainant filed a § 2254 petition generally challenging his state court convictions and the disciplinary process at his place of incarceration. In April 2018 the respondent filed a motion to dismiss the petition, arguing that Complainant was procedurally barred from bringing his claims because he failed to exhaust his state court remedies. A few months later, a magistrate judge issued a report recommending that the petition be dismissed for lack of exhaustion. In July 2018 the Subject Judge entered an order adopting the report and recommendation, granting the respondent's motion to dismiss, and dismissing the § 2254 petition. Complainant filed a motion to alter or amend the judgment, which the Subject Judge denied.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first alleges that approximately 30 years ago the Subject Judge swore to uphold the United States Constitution and laws "under fraudulent pretense" and with "malicious intent to enforce radical, racial inequality towards Negroes, Hispanics, minorities" through a "uniform application" of institutional racism. Complainant then discusses state court proceedings in which he was involved, challenges his state court convictions and sentences on various grounds, challenges certain disciplinary proceedings that occurred in connection with his incarceration, and takes issue with the actions of individuals other than the Subject Judge.

Complainant alleges that the Subject Judge is biased against Complainant due to his "Negro racial ethnic group . . . with sound purpose to annihilate minority racial groups and their seeds through mass incarceration." He asserts that the Subject Judge has a "mental impairment" that prohibited him from being impartial and resulted in Complainant being incarcerated solely because of his race. Complainant states, "Enforcement of racial inequality has caused [the Subject Judge] to suspend application of" the Constitution, laws, and rules with the "intent to satisfy mass incarceration status for Negro race and minorities." Finally, Complainant contends that the Subject Judge's illicit or improper motive caused him to ignore various matters pertaining to Complainant's state court criminal proceedings. 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders in Complainant’s cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge acted with an illicit or improper motive, was biased against Complainant, suffered from a disability, 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