

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 11 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-18-90111**

**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 August 2010 a federal grand jury issued a six-count indictment charging Complainant with drug and firearm-related offenses. Following a trial, a jury found Complainant guilty as to five counts and could not reach a verdict as to the remaining count. On April 11, 2011, the Subject Judge entered a judgment sentencing Complainant to a term of imprisonment. The record shows that Complainant submitted a “Petition for a Writ of Habeas Corpus Pursuant to Title 28 USC 2241” in the case. The docket entry stated that the document was deemed filed as of the date of judgment per the instructions of chambers, and that it was also being treated as a separate § 2241 civil matter.

In May 2011 the Subject Judge entered an order stating that: (1) counsel for Complainant provided the court with the document at the sentence hearing on March 30, 2011; (2) the clerk entered the document in the criminal action as a notice of appeal and noted in the docket entry that it was also being treated as a § 2241 civil matter; and (3) the reference to the civil petition had created confusion. The order directed the clerk to vacate the docket entry and to enter the document nunc pro tunc as a notice of appeal from the judgment of conviction, filed as of April 11, 2011.

Complainant’s document bears a stamp indicating that it was filed on March 30, 2011, but “Filed” is crossed out and “Rec’d” is hand-written above it. The document is also separately stamped as filed on April 11, 2011. This Court later dismissed

Complainant's appeal for lack of jurisdiction. In a separate appeal, this Court affirmed the district court's denial of Complainant's motion for judgment of acquittal. There have been additional proceedings in the criminal case.

Meanwhile, Complainant's § 2241 petition, which was deemed filed on April 11, 2011, was docketed in a separate case. In June 2011 Complainant filed an amended § 2241 petition in which he challenged his convictions on multiple grounds. Later that month, a magistrate judge issued a report recommending that the amended § 2241 petition be dismissed with prejudice, finding that Complainant had not demonstrated he was entitled to proceed under § 2241.

Over Complainant's objections, the Subject Judge adopted the report and recommendation and dismissed the § 2241 petition with prejudice. Complainant appealed. After that, a document that the district court mailed to Complainant was returned to the court undelivered because the envelope did not include a prisoner registration number. The court then re-sent the document to Complainant with the prisoner number. In October 2011 this Court clerically dismissed the appeal for want of prosecution.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he filed his § 2241 petition on March 30, 2011, but that the Subject Judge later "unfiled" it by a stroke of her ink pen by crossing out the 'Filed' stamp to write, by pen, 'Rec'd' above it." He asserts that the "unfiling is obstruction of justice" and "lasted some 11 days when she refiled it" *nunc pro tunc*. He also complains that the "stamp used" was an "OLD round rubber stamp unused in some 25 years." Complainant states that "any judge knows 'can't mix civil and criminal cases' together."

Complainant complains that a document the court mailed to him was returned undelivered for failure to include a prisoner number, and he states that the Subject Judge "posted a Rule 26 to admit the wrongdoing." He states that the Subject Judge learned he was unable to read due to a learning disability but did not provide him any "remedial action." Finally, Complainant asserts that, in the criminal case, the Subject Judge allowed conflicting government testimony to be presented out of the earshot of the jury.

### 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, rulings, and orders in the 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 engaged in obstruction of justice 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