

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. 11-18-90114**

**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 November 2016 Complainant filed a petition for writ of habeas corpus, generally challenging a certain state court conviction and arguing that his constitutional rights had been violated. Later that month, a magistrate judge entered an order construing the petition as one filed pursuant to 28 U.S.C. § 2254 and directing Complainant to inform the court whether he wished to proceed on the claims in his original pleading, amend his pleading, or withdraw his petition.

In December 2016 Complainant filed, among other things, a motion to amend his petition to be filed under 28 U.S.C. § 2241, and the magistrate judge entered an order again construing the petition as filed under § 2254 and directing the respondent to file a response. The respondent filed an answer in December 2016 and Complainant filed a reply the next month. He then filed multiple motions seeking various types of relief, and the magistrate judge or the Subject Judge denied most of the motions.

In late April 2017 Complainant filed a document in which he alleged the court had caused undue delay in the case. In June 2017 Complainant filed in this Court a petition for writ of mandamus and/or prohibition, arguing, among other things, that the district court had caused undue delay in the case. He also filed a motion to proceed in forma pauperis (IFP). This Court denied the IFP motion, determining that the mandamus petition was frivolous and that Complainant did not raise an arguable claim of unreasonable delay. He filed a motion for reconsideration, which this Court denied. In

September 2017 this Court clerically dismissed the mandamus petition for want of prosecution.

In October 2017 Complainant filed in the district court an “Objection to this Court’s Deliberate Delay,” and the Subject Judge overruled the objection, stating there was no evidence of deliberate delay and the court was experiencing high caseloads. Complainant filed a motion for reconsideration, which the Subject Judge denied.

In April 2018 Complainant filed in this Court a petition for writ of mandamus and prohibition, again arguing in part that the district court had caused unreasonable delay in the case. In July 2018 this Court determined that Complainant had established a non-frivolous claim of unreasonable delay, held his petition for writ of mandamus in abeyance for 60 days to allow the district court to rule on his § 2254 petition, and denied his petition for a writ of prohibition.

In July 2018 the magistrate judge issued a report recommending that Complainant’s § 2254 petition be dismissed as time-barred. Over Complainant’s objections, in late July 2018 the Subject Judge adopted the recommendation and the habeas petition was denied as time-barred. Complainant filed a notice of appeal, and the Subject Judge denied him leave to appeal IFP and denied him a certificate of appealability. In October 2018 this Court dismissed Complainant’s previously filed mandamus petition as moot.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “holds ill[-]will towards him” for filing the mandamus petition because his § 2254 petition was “almost immediately dismissed when the time for making summary dismissal had long passed.” Complainant states that the filing of the mandamus petition was necessary because the Subject Judge was ignoring his rights, and the filing of the petition caused the Subject Judge to proceed “through malicious and vindictive acts under bad faith.” Complainant states, “Clearly the judge had no intentions on providing Complainant with a fair or impartial proceeding before or after mandamus filing due to his undue delay and subsequent actions.”

Complainant alleges that the Subject Judge caused undue delay in the case, “violated fundamental fairness,” inflicted cruel and unusual punishment on Complainant, violated his oath of office, and violated the Code of Conduct for United States Judges. Complainant states that he believes the Subject Judge’s actions demonstrate “improper motive, incompetence in the law, and violations of the US Constitution,” as well as “trespass, war, and treason to the US Constitution.” Finally, he states that he believes the Subject Judge lacked jurisdiction in the case and that his orders are void.

## 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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s 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 Judge acted with an illicit or improper motive, was biased against Complainant, violated his oath of office or the Code of Conduct for United States Judges, 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