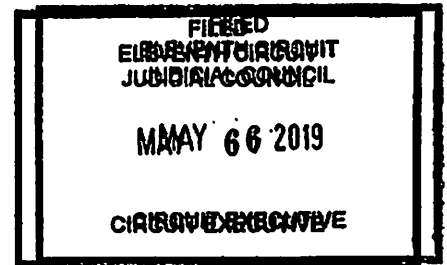


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**11-18-90132**



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

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**ON PETITION FOR REVIEW\***

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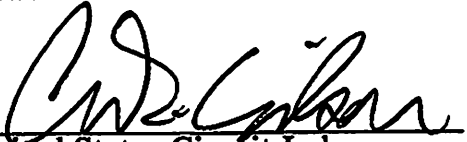
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, DuBOSE, HALL, WALKER, and MARKS,\*\* Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Rosenbaum, Thrash and Walker, the order of Acting Chief Judge Stanley Marcus, filed on 22 January 2019, and of the petition for review filed by the complainant on 27 February 2019, 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, Circuit Judge Gerald Bard Tjoflat, and Chief District Judge Clay D. Land did not take part in the review of this petition.
- \*\* Judge Emily Marks is Acting Chief Judge.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 22 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-18-90132**

**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”).

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2018 Complainant filed an employment discrimination action against a company in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, and the next month, the case was transferred to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ and assigned a new docket number. In August 2018 the Subject Judge issued a notice concerning, among other things, the requirements that the parties file a proposed discovery plan.

After that, the defendant filed a motion to dismiss the complaint and a motion to stay the filing of the discovery plan pending a ruling on the motion to dismiss. In September 2018 the Subject Judge granted the motion to stay the filing of the discovery plan. The next month, the Subject Judge entered an order granting the defendant’s motion to dismiss, finding Complainant failed to allege sufficient facts in support of her claims.

## Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that the docket number for her case changed “which is against the law,” and she generally takes issue with the processing of documents in the case. Complainant also appears to allege that the Subject Judge violated her civil and constitutional rights by taking action in her case while a certain appeal remained pending and using the “wrong docket number.” She attached various documents to her Complaint.

## Supplement

In Complainant’s supplemental statement, she generally reiterates her allegations, alleges that the Subject Judge acted outside of his authority, and takes issue with the transfer of her case to another court.

## 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, 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 with which Complainant takes issue, she provides no credible facts or evidence in support of her allegations that the Subject Judge 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**.

\_\_\_\_\_  
*/s/ Stanley Marcus*  
Acting Chief Judge