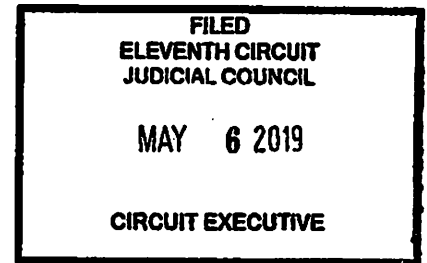


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**11-18-90141**



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

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**ON PETITION FOR REVIEW\***

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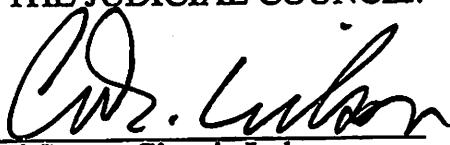
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, DuBOSE, HALL, WALKER, and MARKS, \*\* Chief District Judges.

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**.

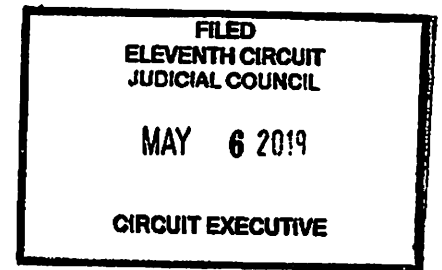
FOR THE JUDICIAL COUNCIL:

  
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.

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

**11-18-90142**



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

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**ON PETITION FOR REVIEW\***

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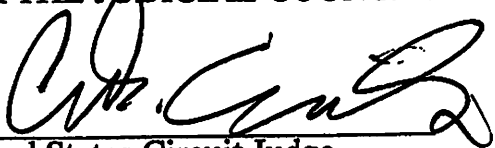
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, DuBOSE, HALL, WALKER, and MARKS,\*\* Chief District Judges.

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 Nos. 11-18-90141 and 11-18-90142**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against U.S. Magistrate Judge \_\_\_\_\_  
and former U.S. District Judge \_\_\_\_\_ of 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  
Magistrate Judge \_\_\_\_\_ and former United States District Judge \_\_\_\_\_  
(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”). Judge \_\_\_\_\_ resigned in \_\_\_\_\_.

Background

The record shows that in August 2012 Complainant filed an employment  
discrimination action against a company. The next month, Judge \_\_\_\_\_ issued an  
order directing Complainant to show cause as to why the case should not be dismissed  
due to her failure to file suit within the relevant limitations period. Complainant filed a  
response in which she argued that she experienced difficulties finding a lawyer and had  
car trouble on a certain day.

In December 2012 Judge \_\_\_\_\_ recommended that Complainant’s complaint  
be dismissed as untimely, finding she did not demonstrate her entitlement to equitable  
tolling of the limitations period. Over Complainant’s objections, in February 2013 Judge  
\_\_\_\_\_ adopted the recommendation and dismissed the complaint.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant complains  
that the Subject Judges found that she did not file her lawsuit in a timely manner, arguing  
that her suit was timely in light of bad weather and a holiday. She appears to allege that  
the Subject Judges violated her civil and constitutional rights. She attached various  
documents to her Complaint.

Discussion

Judge \_\_\_\_\_

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge \_\_\_\_\_, in light of his resignation, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge \_\_\_\_\_. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge \_\_\_\_\_.

Judge \_\_\_\_\_

Rule 3(h)(3)(A) 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 the Complaint concerns Judge \_\_\_\_\_, all of Complainant’s allegations concern the substance of Judge \_\_\_\_\_ findings, order, and recommendation in the case, and the allegations are directly related to the merits of Judge \_\_\_\_\_ decisions or procedural rulings.

Therefore, to the extent the Complaint concerns Judge \_\_\_\_\_, the allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED** to the extent it concerns Judge \_\_\_\_\_.

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