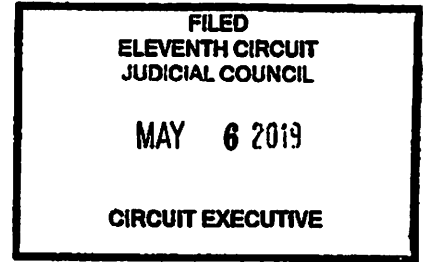


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

11-18-90143



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

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ON PETITION FOR REVIEW\*

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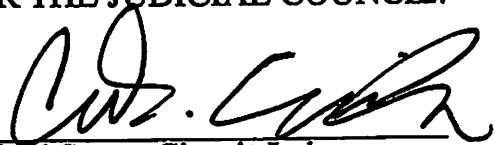
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, DuBOSE, HALL, WALKER, and MARKS,\*\* Chief District Judges.

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. 11-18-90143**

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. Circuit Judge for the U.S. Court of Appeals for the \_\_\_\_\_ Circuit, 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 Circuit 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”).

Previous Complaint

Complainant filed a previous Complaint of Judicial Misconduct or Disability against a United States Magistrate Judge, a United States District Judge, and a United States Circuit Judge, raising allegations concerning those judges’ actions in a lawsuit and earlier Complaint of Judicial Misconduct or Disability she had filed. In September 2018 the Subject Judge dismissed that complaint as merits-related and based on allegations lacking sufficient evidence. No petition for review was filed, and the complaint matter was closed in November 2018.

Present Complaint

In her present Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge’s order dismissing her previous Complaint of Judicial Misconduct or Disability, arguing the judges named in her previous complaint had engaged in misconduct. Complainant also complains that she “put this appeal in with the Executive Judge of the Court of Appeals, not with an Acting Chief Judge.” She attached documents to her 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.

In addition, the “Commentary on Rule 3” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint—even though it does not concern the judge’s rulings in Article III litigation.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and order issued in Complainant’s previous Complaint of Judicial Misconduct or Disability matter, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

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**.

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/s/ Stanley Marcus  
Acting Chief Judge