

**CONFIDENTIAL**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

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

MAY 24 2019

David J. Smith  
Clerk

**Judicial Complaint No. 11-18-90169**

**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 April 2008 Complainant pleaded guilty in two separate criminal cases to one count of being a felon in possession of a firearm. In August 2008 the Subject Judge sentenced Complainant to a total term of 120 months of imprisonment, and his conviction and sentence were later affirmed on appeal.

In August 2017 Complainant filed in one of his criminal cases a “Motion to Clarify Sentence,” generally challenging the calculation of his sentence. A couple of months later, a magistrate judge entered an order directing the clerk to strike the motion and docket it in a new 28 U.S.C. § 2241 proceeding.

After that, Complainant filed in the § 2241 proceeding a motion to amend his petition to seek a recommendation to the Bureau of Prisons (BOP) for retroactive designation of a state facility for the service of his federal sentence. He also filed a response clarifying that he was seeking to proceed only on his request for a recommendation to the BOP. In June 2018 a district judge who is not the Subject Judge issued an opinion and order. Among other things, that order: (1) denied the § 2241 petition because Complainant no longer sought relief appropriate under §2241; and (2) stated that Complainant’s motion to amend and his response would be filed in his criminal case and identified as a request for issuance of a recommendation to the BOP for retroactive designation of a state facility for service of his federal sentence.

That same month Complainant's motion and response were docketed in his criminal case, and he submitted a letter that was docketed as a motion for a status update. In August 2018 he filed two requests for permission to proceed under 28 U.S.C. § 2255(e). In March 2019 the Subject Judge entered an order directing the government to show cause as to why Complainant's motion for a recommendation of retroactive designation to the BOP should not be granted.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the June 2018 order "giving specific directions to be carried into effect as a matter of judicial process" has "not been carried into effect by the sentencing court and is therefore preventing the effective and expeditious administration of the business of the courts." He also states that his "attempts to resolve this matter have been met with silence from the court," and he asserts that the court has "demonstrated its unwillingness to administer justice and judicial process." Complainant requests that the Subject Judge be recused from the case. He attached documents to his Complaint.

### Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

In addition, Rule 4(b)(2) 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 4" 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, *i.e.*, assigning a low priority to deciding the particular case."

All of Complainant's allegations concern the substance of the Subject Judge's official actions and orders in the case, 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**.

A handwritten signature in black ink, appearing to read "S. L. Carter", is written above a horizontal line.

Chief Judge