

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-19-90086**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

FEB 12 2020

David J. Smith  
Clerk

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

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IN RE: The Complaint of \_\_\_\_\_ against United States District Judge  
\_\_\_\_\_ of the United States 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 2015 Complainant filed a pro se 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. After that, he filed multiple motions seeking various types of relief, including a motion for appointment of counsel. In October 2016 a magistrate judge granted the motion for appointment of counsel, appointed the Office of the Federal Public Defender to represent him, and denied his remaining motions without prejudice.

After that, Complainant filed multiple pro se motions and objections, and two attorneys entered an appearance on his behalf. In December 2016 the Subject Judge entered an order directing Complainant, through counsel, to either file an amended § 2254 petition or a notice that he wished to proceed on his original petition, and the order struck his pro se filings without prejudice because he was represented by counsel. \_\_\_\_\_ then entered an appearance as co-counsel for Complainant.

Later in December 2016 Complainant filed a motion to substitute counsel or for leave to file a pro se amended § 2254 petition, generally complaining about the actions of his appointed counsel and alleging that they had misled him. The next month, the Subject Judge denied Complainant’s motion, finding that, in light of his “propensity to file frivolous and non-meritorious claims” and given the nature of his assertions in pleadings before the court, counsel was in a better position to determine whether he had any meritorious claims and to assert those claims in a coherent matter. After that, \_\_\_\_\_ also entered an appearance as co-counsel for Complainant.

Complainant filed additional pro se motions in the case, including another motion to substitute attorney, and a magistrate judge entered orders denying the motion to substitute and striking other motions. After additional proceedings, in December 2018 Complainant, through counsel, filed a third amended § 2254 petition. Afterward, Complainant filed multiple pro se motions, including a motion in which he alleged that his appointed counsel had committed fraud on the court and noted that he had filed a lawsuit against two of his attorneys. In April 2019 a magistrate judge ordered the motions stricken because Complainant was represented by counsel. In September 2019 the respondent filed a response to the amended § 2254 petition. Complainant filed multiple appeals in the case, and this Court clerically dismissed one appeal pursuant to Complainant's motion for voluntary dismissal and dismissed three appeals for lack of jurisdiction.

The record shows that in November 2016 Complainant filed a pro se § 2254 petition challenging another state court conviction. In January 2017 he filed an amended § 2254 petition and a motion for appointment of counsel. A magistrate judge entered an order granting the motion for appointment of counsel and appointed the Federal Public Defender to represent him. \_\_\_\_\_ and \_\_\_\_\_ then entered appearances on Complainant's behalf. After that, Complainant filed multiple pro se motions, which the magistrate judge ordered stricken because he was represented by counsel. Complainant also filed a motion for reconsideration of the order appointing the Federal Public Defender, asserting that a conflict of interest had arisen with his appointed counsel. In March 2017 the Subject Judge entered an order denying the motion for reconsideration, generally finding that Complainant had not shown a basis for reconsideration. Complainant appealed the order, and this Court later dismissed the appeal for lack of jurisdiction.

In April 2017 Complainant filed another pro se motion, and the Subject Judge entered an order denying the motion and stating that, because he was represented by counsel, any future pro se motions would be stricken. Complainant appealed that order, and this Court later dismissed the appeal for lack of jurisdiction. After additional proceedings, in February 2018 Complainant filed a counseled second amended § 2254 petition. He filed additional pro se motions which the magistrate judge ordered stricken or denied. He also filed an additional appeal in the case, which this Court dismissed for lack of jurisdiction. In September 2019 the respondent filed a motion to dismiss the amended § 2254 petition as time-barred.

The record shows that in April 2019 Complainant filed in this Court a petition for writ of mandamus, alleging that fraud had been committed in the district court in his second habeas case and that he was being prevented from submitting pro se filings. He also filed a motion for leave to proceed in forma pauperis (IFP). In June 2019 a judge of this Court entered an order denying the IFP motion because the mandamus petition was frivolous. Complainant filed a motion for reconsideration, which this Court denied.

The record shows that in June 2017 Complainant filed a “Petition for Writ of Habeas Corpus” in which he: (1) alleged that the district court had “committed fraud” in his § 2254 habeas proceedings, and (2) appeared to seek expedited rulings on his § 2254 petitions. The next month, the Subject Judge entered an order dismissing the petition because it did not raise any habeas claims. The order also stated that, to the extent Complainant asked the court to expedite consideration of his § 2254 petitions, the motion was denied but the court would consider the petitions as expeditiously as possible. After that, Complainant filed a motion to disqualify the district court, and the Subject Judge denied the motion, finding that Complainant failed to show that recusal of any judge was necessary. Complainant also filed an appeal and a motion for a certificate of appealability (COA), and this Court later denied the motion for a COA.

The record shows that in January 2019 Complainant filed in state court a lawsuit against \_\_\_\_\_ and \_\_\_\_\_, generally taking issue with their representation of him in his § 2254 proceedings, and the next month, \_\_\_\_\_ removed the case to the federal court. The defendants then filed a motion to transfer the case to the Subject Judge because the case was related to the § 2254 proceedings to which she was assigned. A district judge granted that motion, and the case was reassigned to the Subject Judge. The defendants filed a motion to dismiss the complaint, and in May 2019 the Subject Judge issued an opinion and order granting the motion to dismiss and dismissing the case with prejudice for failure to state a claim.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant complains that the court would not accept his filings because he was represented by appointed counsel, and he contends that the Subject Judge denied his motion to substitute counsel “contrary to law and without an evidentiary hearing.” He alleges that his pro se filings were stricken “in an act of judicial bias that [the Subject Judge] is aware of.” Complainant states that the Subject Judge: (1) allowed his pro se pleadings to be stricken while knowing he had a conflict with his “adversarial counsel purposely filing fraudulent claims” in his habeas proceedings; and (2) issued orders “to shield appointed counsel from fraud.”

Complainant takes issue with the actions of his appointed counsel, alleging that they, among other things, instructed inmates to attack him. He asserts that the Subject Judge “took special interest” in his lawsuit against his attorneys and “had the judge removed” and dismissed the case “despite the pleadings claiming violations of the law.” Complainant states that the Subject Judge exhibited bias and ignored fraud upon the court by his appointed counsel to cause a “harsh outcome” and issued orders to support \_\_\_\_\_ “scheme” and protect her from civil liability.

Complainant alleges that the Subject Judge’s pervasive bias is shown “throughout the record” in two cases “and requires her automatic recusal.” He argues that she exhibited bias in an order by stating that he had exhausted his state court remedies when

she could not have known that because the State had not filed a response in the case. Complainant also alleges that the Subject Judge sat in an appellate capacity of her own decisions and denied one of his pro se pleadings “in violation of the law.” He asserts that the Subject Judge believes her orders will not receive appellate review and has acted to deny him his right to appeal. Finally, he takes issue with the actions of entities and individuals other than the Subject Judge, and 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the cases, 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, he provides no credible facts or evidence in support of his claims that the Subject Judge was biased against him, acted to protect his attorneys from liability, ignored fraud upon the court, 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