

CONFIDENTIAL

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 27 2021

David J. Smith  
Clerk

BEFORE THE ACTING CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90127

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

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IN RE: The Complaint of \_\_\_\_\_ against United States Circuit Judge  
\_\_\_\_\_ of the United States 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 \_\_\_\_\_, 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 May 2020 Complainant filed a Complaint of Judicial Misconduct or Disability against a United States Magistrate Judge, Complaint No. \_\_\_\_\_. In August 2020 the Subject Judge, in his role as \_\_\_\_\_, entered an order dismissing that complaint as lacking sufficient evidence. No petition for review was filed, and the complaint matter is closed.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant contends the Subject Judge dismissed Complaint No. \_\_\_\_\_ despite that the judge being complained about was “still being investigated” in connection with a previous Complaint of Judicial Misconduct or Disability that she filed. She asserts the Subject Judge violated her constitutional and civil rights, and she attached documents to her 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, the “Commentary on Rule 4” 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 and order dismissing her earlier Complaint of Judicial Misconduct or Disability, 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**.

\_\_\_\_\_  
/s/ Charles R. Wilson  
Acting Chief Judge