

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

111590084

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

ON PETITION FOR REVIEW*

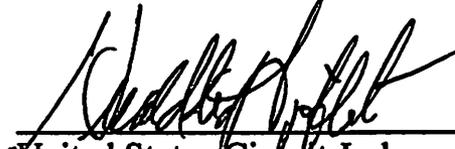
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, and WATKINS, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Steele, and Rodgers, the order of Chief Judge Ed Carnes filed on 23 September 2015, and of the petition for review filed by the complainant on 8 October 2015, 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**.

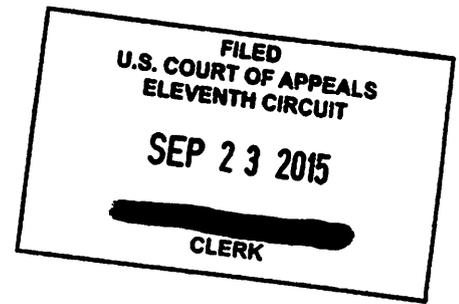
FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

* Chief Circuit Judge Ed Carnes and Chief District Judge Lisa Godbey Wood did not take part in the review of this petition.

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint No. 11-15-90084

IN THE MATTER OF A COMPLAINT FILED BY _____

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.

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 March 2015 Complainant filed a civil rights action against a city and a police officer, generally alleging that the defendants violated her civil and constitutional rights. She also moved for leave to proceed *in forma pauperis* (IFP). A magistrate judge issued an order concerning the requirement that the parties confer and develop a proposed discovery plan. After that, the defendants filed a motion to dismiss Complainant’s complaint for failure to state a claim and a motion to stay discovery pending resolution of their motion to dismiss.

In April 2015 the magistrate judge granted Complainant’s motion to proceed IFP. The magistrate judge’s order stated that service must be effected by the United States Marshal under Fed. R. Civ. P. 4(c)(2), explaining in a footnote that although the defendants had filed a pre-answer motion to dismiss, service must be made proper in accordance with Rule 4(c). The magistrate judge also entered an order granting the defendants’ motion to stay and directed Complainant to file any response in opposition within 21 days. Complainant then filed, among other things, a motion for reconsideration of the order granting the motion to stay and a document alleging that there had been fraud upon the court.

In June 2015 the Subject Judge found that Complainant’s motion for reconsideration served as objections to the magistrate judge’s order and overruled the objections. The Subject Judge specifically found that the magistrate judge had the

authority to rule on the motion to stay and determined that Complainant did not show that the order was clearly erroneous or contrary to law. After that, the defendants filed a motion to dismiss Complainant's complaint for her failure to notify the court of her change of address.

On July 16, 2015, Complainant filed a motion for the disqualification and recusal of the Subject Judge and for a change of venue ("motion to recuse") in which she generally took issue with the defendants responding to her complaint before they were formally served with it. Complainant also alleged that the Subject Judge "routinely" ignored facts and law, "biased herself in not allowing [Complainant] access to the court," was corrupt, refused to acknowledge that a defendant falsified crime statistics, was "willing to allow the magistrate to write false court orders," conspired "to disenfranchise [Complainant] from having access to the federal court," is "handicapped," "cannot and will not rule, for fear of the mafia that she is closely tied to and protects," is a "racist and a human rights violator," "has demonstrated herself to be a confederate," and violated the United States Constitution.

On July 22, 2015, the Subject Judge entered an order denying Complainant's motion to recuse, granting the defendants' motion to dismiss for failure to state a claim, and denying as moot the motion to dismiss for Complainant's alleged failure to notify the court of a change of address. With respect to the motion to recuse, the Subject Judge found that an objective observer would not doubt the Subject Judge's impartiality in the case. As to the motion to dismiss for failure to state a claim, the Subject Judge found that Complainant's claims were barred by the applicable statute of limitations.

Complaint

Complainant's Complaint of Judicial Misconduct or Disability consists of a document that appears to be identical in content to the motion to recuse filed in the case on July 16, 2015. In the document, Complainant alleges that the Subject Judge "routinely" ignored facts and law, "biased herself in not allowing [Complainant] access to the court," was corrupt, refused to acknowledge that a defendant falsified crime statistics, was "willing to allow the magistrate to write false court orders," conspired "to disenfranchise [Complainant] from having access to the federal court," is "handicapped," "cannot and will not rule, for fear of the mafia that she is closely tied to and protects," is a "racist and a human rights violator," "has demonstrated herself to be a confederate," and violated the United States Constitution.

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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s findings and orders entered in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, she provides no credible facts or evidence in support of her allegations that the Subject Judge was biased against Complainant, was part of a conspiracy, exhibited racial bias, 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**.



Chief Judge