

FILED
JUDICIAL COUNCIL
OF THE
ELEVENTH CIRCUIT
DEC 29 2015
CIRCUIT EXECUTIVE

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

111590085

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

ON PETITION FOR REVIEW*

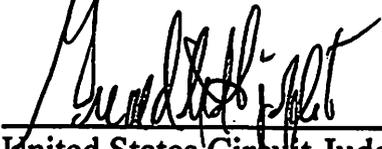
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, WATKINS, and WOOD, Chief District Judges.

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 26 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 did not take part in the review of this petition.

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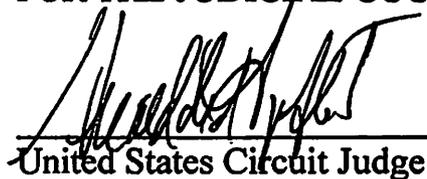
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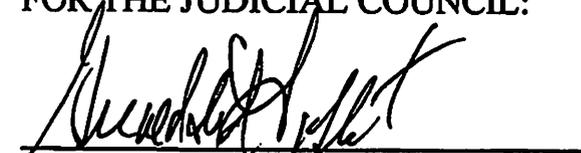
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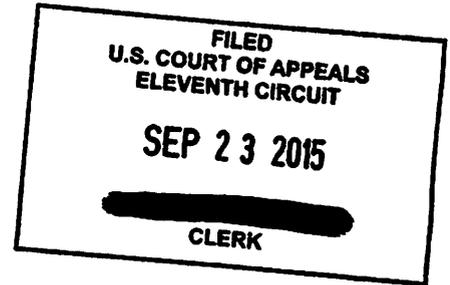
FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

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CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint Nos. 11-15-90085 through 11-15-90087

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judges _____ and _____, of 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 Magistrate Judge _____ and United States District Judges _____ and _____ (collectively, “the Subject Judges”), 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”).

As an initial matter, after Complainant filed his Complaint, he filed three supplemental statements. The filing of those supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2013 Complainant filed a 42 U.S.C. § 1983 civil rights action against an agent with the state Bureau of Investigation, raising a claim of a failure to investigate and prosecute individuals responsible for an alleged murder. He also filed a motion to proceed in forma pauperis (IFP), which Judge _____ granted. In August 2013, Judge _____ issued a report recommending that Complainant’s complaint be dismissed for failure to state a claim on which relief could be granted, finding that Complainant did not have standing to assert his claim against the defendant. In September 2013 Judge _____ adopted the report and recommendation and dismissed the complaint. After that, Complainant filed, among other things, objections to Judge _____ order and motions seeking reconsideration of that order.

In November 2013 Judge _____ construed Complainant’s filings as motions for reconsideration and denied them, finding that he had not presented any new evidence or raised any point of fact or law that would induce the court to reverse its prior decision. Judge _____ also noted that Complainant mentioned that the court did not address his

claim that he suffered from Post-Traumatic Stress Disorder (PTSD) as a result of witnessing the alleged murder. Judge _____ determined that, even assuming Complainant's claim was true, the court did not see any causal relationship between the incident and the named defendant. Complainant filed another motion for reconsideration, which Judge _____ denied.

Complainant then filed multiple motions seeking various types of relief. In January 2014 Judge _____ denied Complainant's motions, finding that they raised arguments and allegations that previously had been considered. Judge _____ stated that if Complainant attempted to file anything further in the case, the clerk was instructed to return the original to Complainant with a notation in the record. In August 2015 Complainant filed a letter to Judge _____ in which he complained that he was not advised of his right to appeal and stated that he thought he was entitled to appeal. Judge _____ construed the filing as a motion to file an out-of-time appeal and denied it. Judge _____ stated that the time for filing an appeal ended in October 2013 and that, instead of appealing, Complainant had "barraged the Court with redundant and frivolous motions."

The record also shows that in September 2013 Complainant filed a § 1983 civil rights action against three defendants, raising allegations concerning the treatment he received at his place of incarceration. He filed a motion to proceed IFP, which Judge _____ granted. Complainant then filed multiple motions seeking to add addenda to his complaint. In late October 2013 Judge _____ entered an order finding that Complainant was improperly attempting to amend his complaint in a piecemeal manner and that his filings amounted to a shotgun pleading. Judge _____ also warned Complainant that the court would not tolerate the use of profane and inflammatory language that he had included in attachments. Judge _____ ordered Complainant to submit an amended complaint on a form and to attach no more than six handwritten pages to it.

After that, Complainant filed numerous motions seeking to add claims or defendants and other types of relief, as well as an amended complaint adding various defendants and raising various claims. In January 2014 Judge _____ issued a report recommending that Complainant's amended complaint be dismissed with prejudice for failure to comply with the court's order and that his pending motions be denied as moot. In the report, Judge _____ found that: (1) Complainant's amended complaint failed to follow the court's instruction that he attach no more than six handwritten pages; (2) many of the attachments had no discernible relevance to a § 1983 claim; and (3) he failed to display proper decorum and respect in his filings. Over Complainant's objections, in March 2014 Judge _____ adopted the report and recommendation, dismissed the complaint with prejudice, and denied the pending motions as moot.

Complainant filed a notice of appeal, and this Court later dismissed the appeal as frivolous. Complainant also filed in the district court multiple “Motions to Add.” In March 2015 Judge _____ denied the motions as moot. Judge _____ also found that Complainant had “overburdened this Court, and now exhausted its patience, with a never-ending stream of patently frivolous motions,” and stated that the “Court does not operate as a comment box: addressing [Complainant’s] numerous, nonsensical filings is impairing the Court’s ability to adjudicate the legitimate claims of other litigants.” Judge _____ warned Complainant that if he persisted in his course of conduct, he would be deemed a serial abusive filer. Later that month, Complainant filed another “Motion to Add.” Judge _____ then entered an order denying the motion and imposing various filing restrictions on Complainant, noting that his “time has come.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the orders entered in his cases, discusses the merits of claims he raised or sought to raise, and alleges that the Subject Judges ignored his claims. He takes issue with the dismissal of his initial case for failure to state a claim, asserting that his claims were clearly stated. He alleges that Judges _____ and _____ did not notify him of his right to appeal, and he states that he “assume[s]” that they had the clerk not give him certain paperwork or tell him how to file a timely appeal. Complainant also complains that he could not read the Judge _____ signature on a certain order, that he had various problems with his facility’s mail system, and that he did not receive certain documents.

Complainant takes issue with Judge _____ order dismissing his complaint and the order imposing filing restrictions. He specifically takes issue with the finding that he had used profanity and had not respected the court, contending that he was merely quoting someone else. Complainant alleges that Judge _____ “almost harassed” him by providing him letters concerning his payment plan, and that Judge _____ made “almost ‘nasty’” and “snide” comments that Complainant’s “time has come” and that he was using the court as a “comment box.” Complainant states that “[it] would seem” that his two cases “have ‘irked’ or raised the ‘hackles’ of” Judge _____. Finally, Complainant appears to allege that “magistrate judges” are prejudiced against incarcerated plaintiffs, raises allegations against individuals who are not federal judges, and requests that this Court appoint him counsel in the Judicial Misconduct proceedings.¹

Supplements

In his first supplemental statement, Complainant reiterates his allegations, takes issue with the Subject Judges’ orders, and states that he “strongly feel[s]” that the Subject

¹ Complainant’s request for the appointment of counsel is DENIED.

Judges “are acting very prejudicial towards all inmates in the _____ Circuit” given the number of dismissed cases. Complainant states that he believes the dismissal of his initial case for failure to state a claim was “criminal” and the result of prejudice. He also states that he “strongly feel[s]” that Judge _____ is prejudiced against inmates.

In his second supplemental statement, Complainant reiterates his allegations and states that he views Judge _____ use of the words “barrage,” redundant,” and “frivolous” in describing Complainant’s filings as offensive and prejudicial. In his third supplemental statement, Complainant states that in his view, Judges _____ and _____ have taken “a prejudicial outlook to an inmate[’]s” claim of PTSD, and he asserts that Judges _____ and _____ have “done all in their power to hinder justice.” Finally, Complainant appears to complain about delay in one of his cases.

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, Rule 3(h)(3)(B) 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 3” 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 – in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judges’ findings and orders entered in the cases, as well as his allegation of delay, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the

Subject Judges were prejudiced against Complainant or inmates in general, treated him in a demonstrably egregious and hostile manner, 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