

JUN - 8 2016

CIRCUIT EXECUTIVE

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

111590142

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

ON PETITION FOR REVIEW*

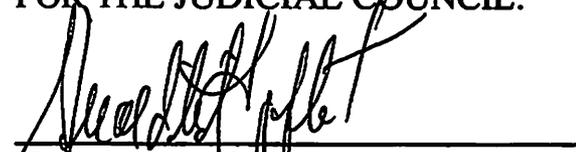
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, and WATKINS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 17 December 2015, and of the petition for review filed by the complainant on 4 January 2016, 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:



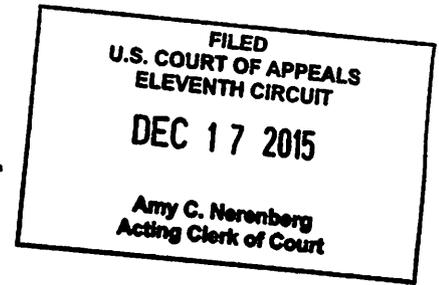
United States Circuit Judge

* 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. 11-15-90142



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 February 2015 Complainant filed a prisoner civil rights action, raising claims relating to the treatment he received at his place of incarceration, asserting that he was in imminent danger of serious physical injury, and requesting an injunction or restraining order. He filed a motion to proceed in forma pauperis (IFP), which the magistrate judge initially granted. After that, Complainant filed multiple amendments to his complaint and other motions seeking various types of relief. In July 2015 he filed a Motion to Recuse the magistrate judge, alleging he had exhibited bias and acted with improper motives in connection with “inordinate delays” in ruling on motions.

In September 2015 the magistrate judge issued an order and report in which he: (1) vacated his previous order granting Complainant’s IFP motion; (2) denied the IFP motion; and (3) recommended that Complainant’s amended complaint be dismissed without prejudice and that his request for injunctive relief be denied. The magistrate judge also dismissed Complainant’s outstanding motions, including the Motion to Recuse, as moot. After that, Complainant filed, among other things, objections to the magistrate judge’s report and recommendation and multiple motions seeking various types of relief, including the recusal of various judges.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge treated him in a demonstrably egregious and hostile manner “by not conducting proceedings to recuse” the “oppressive tyrant” magistrate judge, despite two

motions to recuse him based on his failure to rule. Complainant alleges that the magistrate judge vacated his own orders “for pure vindictive reasons” after a complaint was filed against him, and he alleges that the Subject Judge conspired with the magistrate judge, refused to investigate and assign the case to a different judge, and “compounded many murder attempts and kidnappings against” Complainant.

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 official actions, 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 treated him in a demonstrably egregious and hostile manner, was part of a conspiracy, 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