

FILED
JUDICIAL COUNCIL
OF THE
ELEVENTH CIRCUIT

MAY 10 2016

CIRCUIT EXECUTIVE

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

111590144

**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, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Wood, the order of Chief Judge Ed Carnes filed on 29 January 2016, and of the petition for review filed by the complainant on 22 February 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:

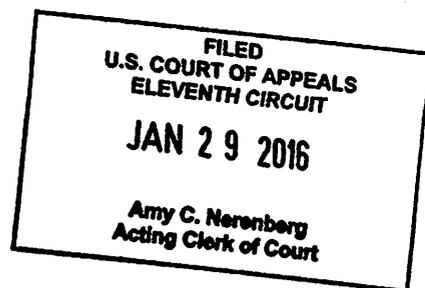


United States Circuit Judge

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

CONFIDENTIAL

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



Judicial Complaint No. 11-15-90144

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 September 2015 Complainant filed a civil rights action against various defendants, raising claims relating to his state court criminal and probation proceedings. He also filed a motion to proceed in forma pauperis (IFP).

The Subject Judge entered an order denying Complainant’s IFP motion and dismissing the complaint as frivolous. The Subject Judge noted that the case was the twelfth complaint Complainant had filed in the court in the past nine months, many of which had been dismissed as frivolous and that the present complaint did not significantly differ from those he had filed before. The Subject Judge also found that Complainant should be sanctioned because he filed a frivolous complaint after being warned that he would be subject to sanctions if he continued to file frivolous complaints. The Subject Judge referred the matter to a magistrate judge to conduct a hearing at which Complainant was ordered to show cause why sanctions in the amount of \$200 should not be imposed.

After the hearing, the magistrate judge issued a report recommending that a sanction in the amount of \$200 was appropriate. Over Complainant’s objections, the Subject Judge adopted the report and recommendation, and imposed a \$200 sanction on Complainant.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge's dismissal of the case as frivolous, asserting that he did so "without reviewing any facts" and after Complainant "had shown a manifest injustice." He also contends that the Subject Judge sanctioned him after he "provided proof of the manifest injustice." Complainant asserts that the Subject Judge conspired to deny him access to the court and denied him due process of law. Finally, Complainant discusses the state criminal and probation proceedings in which he was involved.

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, he provides no credible facts or evidence in support of his allegations that the Subject Judge 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