

FILED
JUDICIAL COUNCIL
OF THE
ELEVENTH CIRCUIT

MAY 10 2016

CIRCUIT EXECUTIVE

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

111590147

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

ON PETITION FOR REVIEW*

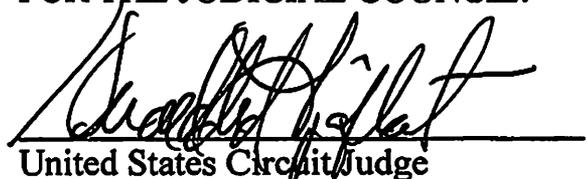
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

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 25 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:

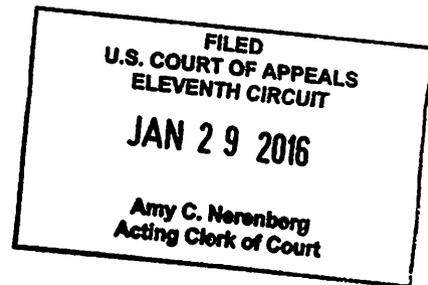


United States Circuit Judge

* 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. 11-15-90147

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 2006 Complainant filed an amended prisoner civil rights action against _____ and two deputy _____, alleging that the officers conducted a warrantless search of his home in violation of his constitutional rights. The next month, a magistrate judge issued a report recommending that the amended complaint be dismissed for failure to state a claim on which relief could be granted under Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364 (1994). Complainant filed a motion to amend his complaint along with a second amended complaint. In October 2006 the Subject Judge adopted the report and recommendation, dismissed the amended complaint, and denied Complainant’s motion for leave to file a second amended complaint.

This Court affirmed in part and vacated in part on appeal, holding that the district court did not err in dismissing the first amended complaint as Heck-barred and did not abuse its discretion in denying Complainant leave to amend his complaint as to _____, but that it abused its discretion in denying him leave to file a second amended complaint as to the individual defendants. After that, the Subject Judge entered an order granting Complainant leave to file the second amended complaint, dismissing with prejudice all claims against _____, and striking certain allegations pertaining to the relief sought. In July 2007 Complainant filed a third amended complaint against the same three defendants. The Subject Judge then entered an order striking all allegations in the third amended complaint, except for those concerning the search-and-seizure claims seeking damages against the individual defendants.

In March 2008 Complainant filed a motion to amend his complaint and a fourth amended complaint naming additional defendants. The magistrate judge issued a report recommending that the motion to amend be denied because the fourth amended complaint was futile, did not comply with prior court orders, and failed to state a claim against the proposed new defendants. Over Complainant's objections, in June 2008 the Subject Judge adopted the report and recommendation and denied the motion to amend, finding it was "long past time to be adding new defendants against whom the statute of limitations has run." Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution.

After that, the individual defendants filed motions to dismiss the third amended complaint or, alternatively, for summary judgment. Complainant filed a motion to recuse the Subject Judge and the magistrate judge, generally alleging that there was an appearance of partiality in the case. In October 2008 the Subject Judge entered an order denying the motion to recuse and other motions Complainant had filed. Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution. In February 2009 Complainant filed a motion to recuse various judges and to set aside the Subject Judge's order, which the Subject Judge denied.

In April 2009 the magistrate judge issued a report recommending that the defendants' motions for summary judgment be granted. The magistrate judge determined that Complainant had failed to establish that he had standing to object to the condition of the home after the search or to receive compensation for damage there, as he did not own the house and had presented no evidence that he owned anything inside of it. After that, Complainant filed multiple motions seeking various types of relief, and the Subject Judge denied those motions.

In July 2009 the Subject Judge entered an order adopting the report and recommendation and granting the defendants' motions for summary judgment. The Subject Judge found that: (1) the arrest warrant authorized the officers to enter the house to look for Complainant; (2) the officers had probable cause to believe evidence of a crime was in the house; (3) exigent circumstances justified their re-entry into the house after Complainant was in custody outside; (4) Complainant did not own the house, and he did not have standing to contest the search or damage to property in the house; and (5) the officers had qualified immunity. This Court dismissed Complainant's appeal as frivolous and meritless. After that, Complainant filed a motion to set aside the Subject Judge's order, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first alleges that the Subject Judge committed misconduct in his June 2008 order denying Complainant's motion for leave to amend. Complainant asserts that it was misconduct for the Subject Judge to find that: (1) Complainant "should have known the names" of

individuals he sought to add as defendants, when the names were concealed and the statute of limitations was tolled; and (2) he could not sue _____.

Complainant also alleges that the Subject Judge committed misconduct in his July 2009 order granting the defendants' motions for summary judgment by finding that: (1) Complainant did not live at the home and lacked standing to recover damages, when it had been determined in a different proceeding that he lived at the residence and had standing; and (2) the officers had probable cause and exigent circumstances existed, when the officers "did not admit to re-entering" the home. Complainant states that he has not had a "full and fair chance to litigate" his claims. Finally, he generally discusses the merits of the claims he raised or sought to raise in his lawsuit.

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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.

All of Complainant's allegations concern the substance of the Subject Judge's findings and orders entered in the case, and they 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**.



Chief Judge