

MAY 10 2016

CIRCUIT EXECUTIVE

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

111590155

**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, Moore, and Land, 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 Casey Rodgers did not take part in the review of this petition.

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90155

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”).

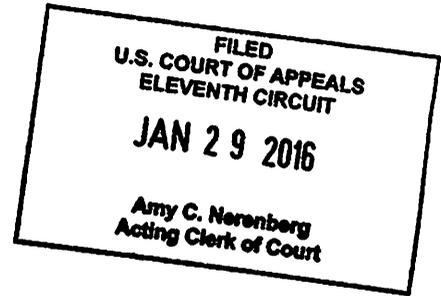
As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in March 2008 a jury found Complainant guilty of various offenses stemming from a counterfeit check fraud conspiracy. In June 2008 the Subject Judge sentenced Complainant to a total term of 156 months of imprisonment. This Court affirmed Complainant’s convictions and sentences on direct appeal.

After that, Complainant filed a 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct his sentence, raising four claims of ineffective assistance of counsel. In June 2013 the Subject Judge determined that three of those claims were meritless but that an evidentiary hearing should be held on the claim that his attorney failed to notify him of a plea bargain offered by the government. In July 2013 an evidentiary hearing was held before the Subject Judge, and Complainant appeared pro se at the hearing. After the hearing, the Subject Judge denied Complainant’s § 2255 motion, generally finding that he had failed to establish that he was entitled to relief. This Court clerically dismissed Complainant’s appeal for want of prosecution.

In November 2013 Complainant filed a “Motion for Consideration to Remand” in which argued that he should have been appointed counsel to represent him at the evidentiary hearing. In January 2014 the Subject Judge granted the motion, determined



that Complainant should have been appointed counsel for the evidentiary hearing, and directed the magistrate judge to appoint counsel for him. After that, in April 2014 another evidentiary hearing was held before the Subject Judge. The Subject Judge then denied Complainant's § 2255 motion, finding that he had failed to establish that he was prejudiced by his trial counsel's conduct, and alternatively, that counsel's performance was not deficient. In May 2014 the Subject Judge granted Complainant a certificate of appealability on the issue of whether he was denied effective assistance of counsel in connection with a plea offer. This Court affirmed on appeal the district court's denial of Complainant's § 2255 motion, holding that he had not shown that he was prejudiced by his counsel's alleged conduct.

The record also shows that in June 2014 Complainant filed a petition for writ of mandamus with this Court, alleging that the district court committed various errors in the criminal and habeas proceedings. In September 2014 this Court denied the petition because Complainant had an adequate alternative remedy to a writ of mandamus.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant appears to allege that the Subject Judge was part of a conspiracy to violate Complainant's constitutional rights and to commit fraud. Complainant asserts that the record was altered to conceal that "Fed. R. of Appellate Procedure 23(A), and 18 U.S.C. § 3006(a)" were violated at the July 2013 evidentiary hearing, and he alleges that there was a "cover-up" of certain facts in the record. Complainant states that in June 2010 there was a "wrongful transfer that violated" FRAP 23(a), which resulted in the destruction of his property and legal materials. Complainant then raises allegations concerning individuals who are not federal judges. He attached various documents to his Complaint, including a June 2015 letter in which he alleged that there was "Extreme Judicial Bias" at the July 2013 evidentiary hearing and in which he appeared to complain about delay in conducting hearings and issuing decisions.

Supplement

In his supplemental statement, Complainant generally reiterates his allegations and appears to allege that at the April 2014 evidentiary hearing, the Subject Judge exhibited bias and conspired to commit fraud by altering the record. Complainant attached other documents to his supplemental statement.

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 Judge's official actions, findings, rulings, and orders entered in Complainant's cases, including any perceived delay, 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 allegations that the Subject Judge was part of a conspiracy, altered the record, was biased against Complainant, 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