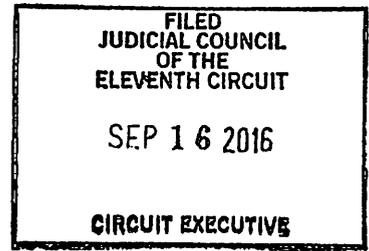


FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111590157



IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

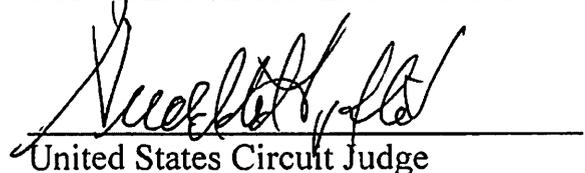
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Bowdre, and Land, the order of Chief Judge Ed Carnes filed on 4 March 2016, and of the petition for review filed by the complainant on 17 March 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, Chief District Judge Merryday, and Chief District Judge Rodgers did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 04 2016

Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90157

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 December 2014 Complainant filed in state court a lawsuit against two defendants pertaining to a contract dispute, and the defendants later removed the case to federal court. In May 2015, with the consent of the parties, the district judge referred the case to the Subject Judge to conduct all further proceedings. Later that month, Complainant filed an amended complaint against the defendants, and in July 2015 the defendants filed a motion to dismiss the amended complaint.

After various proceedings, on September 21, 2015, Complainant filed a “Request for Judicial Notice” in which he described his receipt of a September 10, 2015 letter from the Subject Judge’s courtroom deputy in an envelope from a law firm representing the defendants. Complainant questioned whether the courtroom deputy had exceeded her authority and whether the law firm had “been instrumental.” A few days later, Complainant filed a “Request for Case Management Conference” in which he asked various questions about the September 10, 2015 letter and, “[i]n the alternative,” moved for transfer of the case to a different court.

In early October 2015 the Subject Judge granted the defendants' motion to dismiss *without prejudice*, generally finding that the amended complaint contained various pleading deficiencies. Complainant filed a motion for reconsideration, which the Subject Judge denied. On October 20, 2015, Complainant filed a second amended complaint, and the next month, the defendants filed a motion to dismiss that complaint. The record also shows that in December 2015 Complainant filed with this Court a "Petition for Writ of Mandamus and Petition for Writ of Prohibition" in which he took issue with the actions of the Subject Judge and the district judge in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he sent a letter to a district court judge requesting clarification on a certain issue and that in response he received a letter dated September 10, 2015, signed by a courtroom deputy. Complainant states that the letter was in an envelope from the law firm representing the defendants, did not have a cover letter, and "arrive[d] surreptitiously." He notes that he filed documents seeking clarification of the matter but contends that he received no response. He also states that he discovered that docket entries had been modified "without the standard 'notification as to activity in the docket.'"

Complainant states that "the most important question is what instructions were given to opposing counsel in 'sending the letter' to" Complainant. He states, "Without a 'cover letter' from opposing counsel, [Complainant] is left to surmise inappropriate ex-parte communications, initiated by" the Subject Judge. Complainant attached various documents to his Complaint, including: (1) a letter dated September 8, 2015 that he wrote to a district judge; (2) a letter on Clerk's Office letterhead dated September 10, 2015, informing Complainant that it was improper to correspond directly with a judge; and (3) a copy of an envelope addressed to Complainant with a law firm's return address printed on it and a postmark date of September 14, 2015.

Supplement

In his supplemental statement, Complainant states that another judge has been "unresponsive" to his grievances. He attached an Administrative Order from the Supreme Court of _____ concerning a chief judge's duty to take appropriate action upon receipt of notice that another judge has violated the Code of Conduct.

Discussion

Complainant's claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge engaged in an improper *ex parte* communication or otherwise engaged in misconduct.

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 that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(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