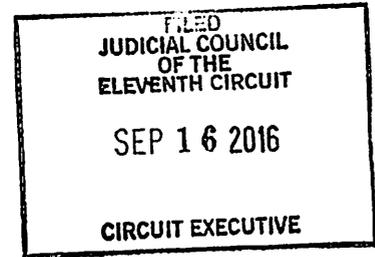


FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111590159



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, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Steele, the order of Chief Judge Ed Carnes filed on 22 February 2016, and of the petition for review filed by the complainant on 21 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 and Chief District Judge Rodgers did not take part in the review of this petition.

FILED
JUDICIAL COUNCIL
OF THE
ELEVENTH CIRCUIT

SEP 16 2016

CIRCUIT EXECUTIVE

FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

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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.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 22 2016
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-15-90159 and 11-15-90160

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 January 2015 Complainant filed a lawsuit against _____, as well as a motion to proceed in forma pauperis (IFP). Judge _____ granted the IFP motion and stated that Complainant was to prepare the summonses and have them issued by the clerk. In May 2015 Judge _____ entered an order noting that it did not appear that the defendant had been properly served and directing Complainant to either perfect service by June 9, 2015, show that service had been made, or show good cause why service had not been perfected.

In September 2015 Judge _____ entered an order stating that the defendant advised that although its counsel had been served, Complainant had not served the United States Attorney’s Office, as required by Fed. R. Civ. P. 4(i)(2). Judge _____ directed Complainant to prepare by September 22, 2015 a summons for issuance and service, and noted that his failure to do so could result in a recommendation that the case be dismissed for failure to prosecute. On October 1, 2015, Judge _____ issued a report recommending that the action be dismissed without prejudice for failure to prosecute. On October 21, 2015, Judge _____ issued an order adopting the report and recommendation and dismissing the complaint without prejudice for lack of prosecution due to Complainant’s failure to perfect service on the defendant.

After that, Complainant filed a motion, which Judge _____ construed as a motion for reconsideration and denied, finding that Complainant offered no change in law, new evidence, or clear error that would warrant reconsideration. Complainant then filed a “Motion for Continuance,” which Judge _____ construed as another motion for reconsideration and denied in November 2015. Complainant filed a “Motion for Disqualification” in which he stated that he had “provided all three major grounds that justify reconsideration.” On November 9, 2015, Judge _____ denied the motion, finding that Complainant’s allegations that he had ruled incorrectly were not sufficient to constitute pervasive bias requiring disqualification, and that, in any event, the motion was moot because the case was closed.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that “the judge had an improper motive” and violated the canons of the Code of Conduct for United States Judges pertaining to disqualification. Complainant specifically alleges that Judge _____ November 2015 order denying the motion for reconsideration violated Canon 3C(1)(a) “due to” Judge _____ October 2015 report and recommendation. Complainant also contends that the November 2015 order denying the Motion for Disqualification violated Canon 3D “where a remittal was disclosed on the record the basis of disqualification.” Complainant attached documents to his Complaint.

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.* (emphasis added). 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 Judges’ report and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ 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 claims that the Subject Judges acted with an improper motive 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