

MAY 17 2016

CIRCUIT EXECUTIVE

FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111690001

IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

Before: 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 Wilson, Pryor, Rosenbaum, Thrash, and Land, the order of Acting Chief Judge Frank M. Hull filed on 25 February 2016, and of the petition for review filed by the complainant on 10 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:

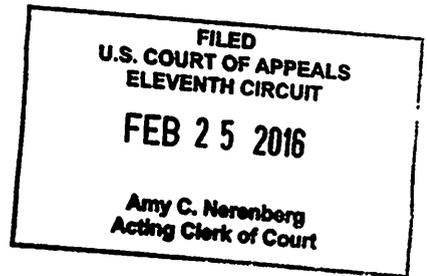


United States Circuit Judge

* Chief Circuit Judge Ed Carnes, Circuit Judge Gerald Bard Tjoflat, Circuit Judge Frank M. Hull, and Chief District Judge M. Casey Rodgers did not take part in the review of this petition.

CONFIDENTIAL

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint No. 11-16-90001

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for the U.S. Court of Appeals for the _____ Circuit, 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 Circuit 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 July 2014 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, generally challenging his state court conviction. After various proceedings, in January 2015 the district judge denied Complainant’s § 2254 petition as untimely and denied him a certificate of appealability (COA). In March 2015 Complainant filed a motion for reconsideration, which the district judge construed as a motion for leave to file a belated appeal and granted. Complainant then filed a notice of appeal.

In this Court, Complainant filed a motion to proceed in forma pauperis (IFP) and a motion for a COA. In June 2015 a circuit judge denied the motion for a COA and denied the IFP motion as moot. The next month, Complainant filed a “Motion for Reconsideration En Banc,” raising various arguments. In September 2015 a two-judge panel denied the motion for reconsideration, determining that Complainant offered no new evidence or meritorious arguments to warrant relief.

Earlier Complaint

In September 2015 Complainant filed a Complaint of Judicial Misconduct or Disability against the district judge and two circuit judges involved in his habeas case and appeal. In the Complaint, Complainant alleged, among other things, that the judges “wrongfully denied” him a COA and “wrongfully denied” his motion for reconsideration.

He asserted that the circuit judges ignored certain evidence and falsely stated that he did not provide new evidence. Complainant alleged that the judges were “merely trying to protect their friends from prosecution,” and conspired with the State Attorney General and/or counsel for the State. He then listed what he claimed were “facts proving the claims of conflict of interest and judicial misconduct.”

The Subject Judge, in his role as _____, dismissed the Complaint on the grounds that it was merits-related and based on allegations lacking sufficient evidence to raise an inference that misconduct had occurred or that a disability existed.

Present Complaint

In the present Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judge’s dismissal of his earlier Complaint of Judicial Misconduct or Disability. Complainant states that he is not attacking the merits of the Subject Judge’s decision to “wrongfully” dismiss the Complaint. He then contends that the Subject Judge “unconstitutionally dismissed” the Complaint “without conducting a proper investigation,” despite the credible evidence that Complainant provided in support of his claims. He states that the Subject Judge “deliberately misconstrued [his] complaint as a complaint attacking the merits of the orders issued by” the named judges, when he specifically stated that he was not merely attacking the merits of their decisions.

Complainant also takes issue with the Subject Judge’s determination that Complainant did not provide any credible facts or evidence in support of his allegations, contending that he did in fact provide such evidence. Complainant asserts that the Subject Judge violated 28 U.S.C. § 352 by not conducting an investigation, and that he “arbitrarily, obtusely, and unconstitutionally” ignored the evidence “to protect his subordinates from impeachment.” Complainant states that the “judicial system in this country is corrupt” and that judges “like [the Subject Judge] deliberately misconstrue EVERYTHING they are told to protect the river of dirty money flowing through the” state and federal governments.

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.

Furthermore, the “Commentary on Rule 3” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint—even though it does not concern the judge’s rulings in Article III litigation.

Although Complainant states that he is not attacking the merits of the Subject Judge’s dismissal order, to the extent his allegations concern the substance of the Subject Judge’s order dismissing the earlier Complaint of Judicial Misconduct or Disability and determination not to conduct further investigation, 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 acted with an illicit or improper motive, ignored evidence to “protect his subordinates from impeachment,” 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**.



Acting Chief Judge