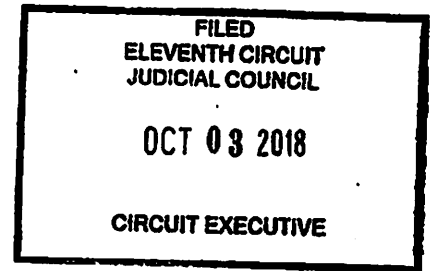


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111890011



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

ON PETITION FOR REVIEW*

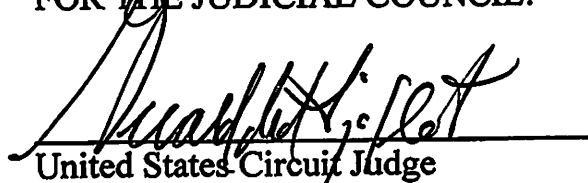
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes filed on 2 July 2018, and of the petition for review filed by the complainant on 6 August 2018, 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 did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90011

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 permitted. See 11th Cir. JCDR
6.7.

Background

The record shows that in May 2017 Complainant filed a 28 U.S.C. § 2254 petition
for writ of habeas corpus generally challenging his state court conviction and sentence.
The Subject Judge then entered an order directing Complainant to file an amended
petition, finding the initial petition was “an incomprehensible running commentary of
accusations related to [Complainant’s] apprehension and trial.” Complainant then filed a
motion to appoint counsel, which the Subject Judge denied without prejudice.
Complainant appealed the denial of his motion to appoint counsel, and this Court later
dismissed the appeal for lack of jurisdiction.

In September 2017 Complainant filed an amended § 2254 petition. The same day,
the Subject Judge entered an order noting that Complainant had mailed letters and a
courtesy copy of the amended petition to the Subject Judge, and stating that the amended
petition directly contravened the directions in the order directing him to file it. The order
directed the Clerk to return the letters and copy of the petition, and stated that
Complainant shall not address any additional letters to the Subject Judge.

Later that month, the Subject Judge entered an order finding that the amended
petition did not comply with the requirements of the court’s previous order. The order
stated that: (1) while Complainant succinctly stated his grounds for relief, “the facts

supporting the grounds is a commentary of the trial proceedings”; (2) the petition contained “citations to case law with lengthy descriptions of the holding in the cases”; and (3) Complainant, “in contravention of the Rules Governing 2254 Petitions, purposefully and deliberately crossed out the words ‘Do not argue or cite law.’” The order directed Complainant to file a second amended petition by October 30, 2017.

Complainant then filed a motion for clarification inquiring about a memorandum in support of his petition, and the Subject Judge granted the motion, noting in part that the court’s previous order limited the memorandum to 25 pages and did not limit the petition itself. Complainant also filed a motion for reconsideration of the order directing the clerk to return the courtesy copy of the amended § 2254 petition in which he, among other things, explained why he had sent a courtesy copy to the Subject Judge.

On October 20, 2017, the Subject Judge entered an order: (1) construing Complainant’s motion for reconsideration as a motion for relief from the order directing him to file a second amended petition; and (2) granting the construed motion. The Subject Judge stated that, while Complainant’s amended petition did not comply with the requirements of the order directing him to file it, “the Court, recognizing [Complainant’s] description of his medical problems, will vacate its Order requiring [him] to file a second amended petition and will order the Respondent to respond to the amended petition.” The order directed the clerk to vacate the order requiring Complainant to file a second amended petition, and stated that he was proceeding on his amended petition. On the same day, the Subject Judge directed the respondent to show cause why the amended petition should not be granted.

On October 25, 2017, Complainant filed a second amended § 2254 petition. He then filed multiple motions seeking various types of relief, including two motions to file additional documents in support of the petition. The respondent filed a motion for extension of time to file its response in which it stated that: (1) it would be addressing the grounds raised in Complainant’s second amended petition; and (2) if the second amended petition had not been filed, it intended to move to strike the first amended petition “for its over burdensome presentation of the claims.” The Subject Judge then entered orders that, among other things, granted Complainant’s motions to file additional documents and granted the respondent’s motion for an extension of time.

In January 2018 Complainant filed a motion in which he sought to file argument to accompany his petition and contended that the respondent disregarded the court’s order by stating that it would respond to the second amended petition. The respondent then filed a motion requesting that the court clarify which petition it should address. The Subject Judge entered an order: (1) granting the respondent’s motion for clarification; (2) stating that Complainant was proceeding on his second amended petition; (3) granting Complainant’s motion to file argument to accompany his second amended petition; and (4) staying the case pending the respondent’s response and Complainant’s reply.

Complainant filed a motion for reconsideration and a “Motion for Summary Judgment” in which he generally took issue with the Subject Judge’s orders pertaining to which § 2254 petition was the operative petition, and the Subject Judge denied those motions. After additional proceedings, in April 2018 the respondent filed a response to the second amended petition. Complainant then filed a “Motion to Request a Fair & Unbiased Proceedings,” and the Subject Judge granted the motion, noting that the court was awaiting Complainant’s reply to the respondent’s response. In May 2018 Complainant filed a “Rebuttal” to the respondent’s response. Several days later, the Subject Judge issued an order denying Complainant’s second amended § 2254 petition, finding that his claims were procedurally defaulted or that he was not entitled to relief on the claims. The order also stated that he was not entitled to a certificate of appealability (COA).

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge refused to accept his initial and first amended § 2254 petitions because she found them to be too lengthy and confusing. He notes that the Subject Judge ordered him to file a second amended petition and that he timely filed that petition. Complainant states that, after he complied with the order directing him to file a second amended petition, he received notice that the Subject Judge had rescinded her order requiring him to file the petition. He also states that he submitted motions for clarification as to which § 2254 petition would be considered, but that he has not received any response.

Complainant contends that the Subject Judge “deliberately or inadvertently” provided the respondent grounds to have his first amended § 2254 petition dismissed, thus protecting the lower court and preventing the exposure of judicial and prosecutorial misconduct that caused him to be illegally imprisoned. He alleges that the Subject Judge delayed and denied him justice and protected others who were guilty of corruption and collusion. He also states that the Subject Judge’s actions reflect bias against him and favoritism toward the respondent.

Complainant states that he is seeking “summary judgment” to determine whether the Subject Judge acted properly, legally, and competently in rescinding her order requiring him to submit a second amended § 2254 petition. He contends that his second amended petition was “thrown-out” and “discarded” without any legal reason provided other than the Subject Judge’s “change of heart.” Complainant also contends that the Subject Judge’s abuse of discretion created a conflict of interest, and he requests that his case be considered in a different jurisdiction due to the “fraternizations/associations” of federal and state judges in the state. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant generally reiterates his allegations and alleges that the Subject Judge colluded with state Attorney General’s Office and the

respondent. He also takes issue with the Subject Judge's order denying his § 2254 petition and denying him a COA, contending that the decision was predetermined, biased, and the result of collusion, and that the Subject Judge did not read his Rebuttal. Finally, Complainant asserts that the Subject Judge might be disabled due to her age. He attached a document to his supplement.

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.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, rulings, findings, and orders entered in the case, 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 claims that the Subject Judge acted with an illicit or improper motive, had a conflict of interest, colluded with others, suffers from a disability, 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