

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

111690032

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

ON PETITION FOR REVIEW*

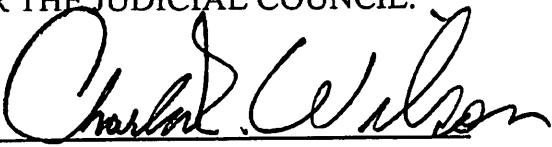
Before: WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM,
and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH,
BOWDRE, LAND, WATKINS, DUBOSE and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Pryor, Jordan, Bowdre, and Land, the order of Acting Chief Judge Stanley Marcus filed on 31 March 2017, and of the petition for review filed by the complainant on 5 May 2017, 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 Frank M. Hull, Circuit Judge Stanley Marcus, Circuit Judge Gerald Bard Tjoflat and Chief District Judge Rodgers did not take part in the review of this petition.

MAR 31 2017

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-16-90032

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”).

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 June 1998 Complainant filed a lawsuit against multiple
defendants, raising claims arising out of his former employment with a police
department. The district court dismissed the complaint, finding it was frivolous and
failed to state a claim. In Appeal no. _____, this Court vacated the dismissal, holding
that Complainant sufficiently stated a prima facie case as to certain claims, and that he
should be given the opportunity to amend his complaint with respect to another claim.
Ultimately, after Complainant filed a second amended complaint, in September 2001 the
district court granted some defendants’ motions to dismiss, and in March 2002 granted
summary judgment in favor of the remaining defendants. In February 2003 this Court
affirmed. Complainant filed other unsuccessful motions and appeals relating to the
judgment.

In April 2004 Complainant filed an amended complaint against numerous
defendants, arguing in part that certain judges conspired to ignore “fraudulent
concealment” in an earlier case. The district court dismissed the complaint as barred by
res judicata, as frivolous, and for failure to state a claim. This Court affirmed on appeal.

In March 2006 Complainant filed a lawsuit against various judges and other defendants, alleging in part that the defendants covered up and refused to acknowledge a “Case Proving Remand/Mandate Order” and “Fraudulent Concealment of the Case Proving Evidence.” The district court dismissed the complaint with prejudice as frivolous. After that, Complainant filed multiple motions seeking various types of relief, which the district court denied. Complainant appealed and moved to proceed in forma pauperis (IFP) on appeal.

In September 2007 the Subject Judge entered an order denying the IFP motion because the appeal was frivolous, and a two-judge panel on which the Subject Judge sat later denied a construed motion for reconsideration. In December 2007 a panel of this Court on which the Subject Judge sat denied other motions Complainant filed, including a motion to recuse, and dismissed the appeal as frivolous. The panel noted that Complainant moved for the recusal of this Court’s judges based upon his belief that they had not complied with this Court’s mandate in Appeal no. _____. The panel noted that this Court had affirmed the district court’s resolution of the underlying case in a later appeal, and that Complainant’s belief that he was entitled to a different resolution was “mistaken.”

In June 2008 Complainant filed a lawsuit against the Subject Judge and other defendants, alleging in part that the judges conspired to conceal “case proving evidence” and disobeyed this Court’s mandate in an earlier appeal. In July 2008 the district court dismissed the complaint with prejudice on various grounds. Complainant appealed, and this Court clerically dismissed the appeal for want of prosecution in March 2011. Complainant then filed an amended notice of appeal, which this Court dismissed for lack of jurisdiction.

Earlier Complaint

Complainant filed an earlier Complaint of Judicial Misconduct or Disability against a United States Circuit Judge, alleging that the judge and others illegally worked together to cover up the decision in Appeal no. _____ and other filings, and taking issue with the judge’s order in a previous Complaint of Judicial Misconduct or Disability matter. In March 2016 the Subject Judge, in his role as _____, dismissed that Complaint on the grounds that it was merits-related and based on allegations lacking sufficient evidence. The Judicial Council Review Panel affirmed the dismissal.

Present Complaint

In the present Complaint of Judicial Misconduct or Disability, Complainant names the Subject Judge and “the entire _____ Circuit involved, et al,” and alleges that the Subject Judge engaged in “intentional lying” to “Cover-Up and Continue the Conspiracy.” Complainant discusses allegations in his earlier Complaint of Judicial

Misconduct or Disability that this Court's "Mandate Order" in appeal no. _____ was ignored, and he states that "Judges illegally worked with attorneys to help [a county] escape prosecution for the obvious RACISM/GUILT established by the Mandate Order by simply Lying, ignoring and trashing filings to Cover-Up." He states that "Judges" have intentionally lied and ignored "Mandatory requirements of LAW." He also states that "Every Judge involved" has refused to apply Rule 37(b)(2)(C) in violation of the law.

In an attached "Summation of the Complaint . . . ," Complainant states that his Complaint is against the Subject Judge "for Continuing this LYING Conspiracy to Cover-Up: the Mandate Order; filings related thereto; and illegal refusal to apply the related rules and Mandatory Sanctions in the prior" Complaint of Judicial Misconduct or Disability matter. He states that "by fulfilling this Conspiracy every judge involved obstructed justice and abused the public trust." He also discusses his prior litigation and raises allegations against individuals other than the Subject Judge. Finally, he requests that an attached "Motion to Disqualify the Entire _____ Circuit . . . ," which he filed in a previous matter, be answered.¹ Complainant attached various other documents to his Complaint, including the Subject Judge's March 2016 dismissal order in the previous Complaint of Judicial Misconduct or Disability matter, which Complainant alleges "is a LIE in that it Dismissed [the previous Complaint] with no comment to the main cause Mandate Order that required mandatory Disclosure of what this _____ Circuit argued to be the Case Proving evidence as certain as Discovery Rule 37(b)(2) has to be applied."

Supplement

In his supplemental statement, Complainant names various judges involved in his prior cases and appeals, and he alleges that those judges, among other things, "intentionally lied," covered up and ignored various matters, disobeyed the law, and conspired to deny him relief.

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

¹ Complainant's Motion to Disqualify is DENIED.

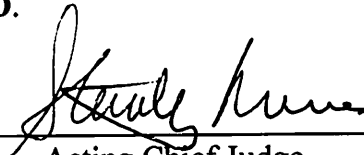
merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, orders, and opinions entered in Complainant’s appeals and previous Complaint of Judicial Misconduct or Disability matter, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Other than those decisions or procedural rulings that he challenges, Complainant provides no credible facts or evidence in support of his claims that the Subject Judge 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). Therefore, 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