

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

APR 26 2017

CIRCUIT EXECUTIVE

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

111690122

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

ON PETITION FOR REVIEW*

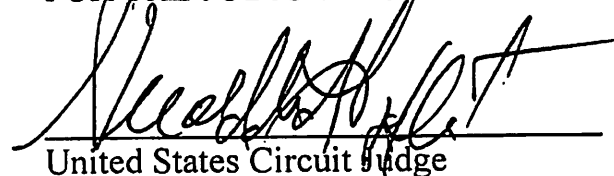
Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DUBOSE and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Thrash and Land, the order of Chief Judge Ed Carnes filed on 1 February 2017, and of the petition for review filed by the complainant on 23 February 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 and Chief District Judge Rodgers did not take part in the review of this petition.

FEB 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90122

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 2016 Complainant filed in the United States District Court for the _____ District of _____ a “Petition for the Great Writ of Habeas Corpus by a Person Unlawfully Imprisoned” in which he challenged a state court conviction and stated that his petition was being filed pursuant to a certain state statute. He also filed a motion to proceed in forma pauperis (IFP), which a magistrate judge granted. In September 2016 a district judge issued an order stating that the case was a habeas action brought pursuant to 28 U.S.C. § 2254 and transferring the case to the United States District Court for the _____ District of _____. Complainant then filed an “Objection to the Recharacterization” of his petition as one filed under § 2254 and a motion for a hearing.

In October 2016 a magistrate judge entered an order noting that Complainant’s petition would be construed as a § 2254 petition because he was challenging the constitutionality of his custody pursuant to the judgment of a state court. The magistrate judge directed Complainant to inform the court whether he wished to proceed under § 2254 on the claims in his original pleading, amend his pleading to assert additional claims under § 2254, or withdraw his petition. The Subject Judge then denied

Complainant's motion for a hearing and referred the matter to the magistrate judge for further proceedings. After that, Complainant filed, among other things, motions for immediate release or action, which the magistrate judge denied.

In November 2016 the Subject Judge issued an order overruling various objections Complainant had filed, noting that the court did not have jurisdiction over habeas corpus proceedings brought under the state statute. The Subject Judge also entered an order adopting the magistrate judge's orders denying the motions for immediate release or action. Also in November 2016, the magistrate judge issued a report recommending that Complainant's § 2254 petition be denied as untimely. Over Complainant's objections, the Subject Judge adopted the magistrate judge's recommendation and denied the petition as time-barred.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge intentionally disregarded state and federal laws. He contends that the Subject Judge denied, delayed, and suspended the "Great Writ of Habeas Corpus" he filed pursuant to a state statute, and he takes issue with the treatment of his filing as a § 2254 petition.

Complainant asserts that the Subject Judge "unlawfully delegated his authority to a pretend magistrate" judge who did not have the authority to act under 28 U.S.C. § 636. He states that the magistrate judge improperly recharacterized his petition as a § 2254 petition so that the Subject Judge and the magistrate judge could violate Complainant's right to a hearing under the state constitution. He also contends that the Subject Judge did not fulfill his duty to hold a certain individual in contempt. Finally, Complainant states that the Subject Judge exhibited "gross ignorance" of state law.

Supplement

In his supplemental statement, Complainant reiterates his allegations that the Subject Judge intentionally failed to comply with state law and unlawfully delegated his authority to a magistrate judge to avoid his statutory obligation to hold an individual in contempt. Complainant alleges that the Subject Judge "refuses to take notice" of the fact that he is being unlawfully imprisoned, and he asserts that he is entitled to immediate release from his unlawful imprisonment. Finally, Complainant states that the Subject Judge exhibited "ignorance and incompetence through his refusal to comply with the Law."

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, findings, rulings, 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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge acted with an illicit or improper motive, was incompetent, 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