

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

11-21-90112

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAR 02 2022

CIRCUIT EXECUTIVE

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


ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on October 1, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on December 9, 2021, and the petition for review filed by petitioner on February 1, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90112

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 09 2021

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge
_____ of the United States 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”).

Background

The record shows that in March 1997 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, challenging certain state court convictions and raising, among other things, claims of ineffective assistance of trial counsel. After various proceedings, in November 1999 the Subject Judge issued an order denying the § 2254 petition with prejudice, finding a claim was procedurally barred and, in any event, the state courts’ decisions were not contrary to, and did not involve an unreasonable application of, federal law. Complainant filed a motion for a certificate of appealability, which this Court denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that, during his state court criminal proceedings, his trial attorney was a law clerk for the Subject Judge, who was then a state court appellate judge. He contends this caused the Subject Judge to have a conflict of interest in the federal habeas proceedings, and he asserts that the Subject Judge “took [Complainant’s] case” from the magistrate judge and denied him relief in the habeas proceedings.

Complainant asserts the Subject Judge’s conflict of interest was “compounded” because he: (1) quoted a “fraudulent denial” of a state court motion for relief that relied on “pages of transcripts that had never before been transcribed”; (2) erroneously relied on

an incomplete and uncertified state court record; and (3) was aware of the conflict of interest in the state court proceedings and “carried/compounded” the conflict into federal court. Complainant alleges the Subject Judge “consciously committed fraud on the Federal Judiciary, committed fraud on his oath of office, and committed fraud on” Complainant, as well as demonstrated “undue bias, prejudice, impropriety, and sympathy for” Complainant’s trial counsel. Complainant attached documents to his Complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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 in the above-described case, including his failure to recuse, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased, had a conflict of interest, committed fraud, violated his oath of office, 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**.

/s/ William H. Pryor Jr.
Chief Judge