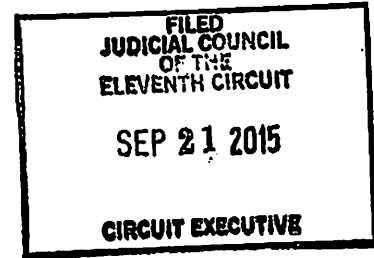


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111590049



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

ON PETITION FOR REVIEW*

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

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Steele, and Rodgers, the order of Chief Judge Ed Carnes filed on 25 June 2015, and of the petition for review filed by the complainant on 13 July 2015, 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

JUN 25 2015

DOUGLAS J. MINCHER
CLERK

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90049

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”).

Background

The record shows that in June 2013 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, raising various challenges to his state court conviction for attempted child molestation. Later that month, a magistrate judge issued a report recommending that Complainant’s § 2254 petition be denied, generally finding that he failed to establish that he was entitled to relief on his claims. Complainant filed objections to the report and recommendation, and he moved to amend his petition to add additional claims. He also filed two motions seeking relief under Fed. R. Civ. P. 60(b).

In August 2013 the Subject Judge adopted the magistrate judge’s report and recommendation, denied the claims Complainant had made in his amended § 2254 petition, and dismissed the Rule 60(b) motions as moot. The Subject Judge generally found that Complainant’s “central complaint,” that he was convicted of attempted child molestation when he was charged with child molestation, was not a federal claim and that the court was bound by the state court’s determination that attempted child molestation was a lesser included offense of child molestation.

Complainant then filed a motion for leave to file a second supplemental or amended petition seeking to raise additional claims, and on August 15, 2013, the Subject Judge denied the motion, finding that the additional claims did not entitle him to federal habeas relief. After that, Complainant filed numerous motions seeking various types of relief, including motions to amend his § 2254 petition and Rule 60(b) motions, and the

Subject Judge generally denied or dismissed those motions. Complainant also filed various notices of appeal, and this Court clerically dismissed certain appeals for want of prosecution. In September 2014 this Court denied Complainant's motion for a certificate of appealability (COA) as to the denial of his § 2254 petition, generally holding that he did meet the standard for relief. In December 2014 this Court denied another motion for a COA as to Complainant's challenge to the denial of other motions he had filed. Complainant has continued to file motions seeking various types of relief, which the Subject Judge has denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge conspired with state and federal officials "to conceal 'unconstitutional-operative-effects'" of certain state statutes, which allow the state to convict individuals on "attempt" offenses contrary to clearly established federal law. He alleges that the Subject Judge "denied and oppressed" his constitutional right to challenge the statutes by "willfully failing" to address the merits of his arguments. Complainant asserts that the Subject Judge "fraudulently misrepresent[ed]" that a federal court cannot address the statutes.

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 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge was part of a conspiracy, made misrepresentations, 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