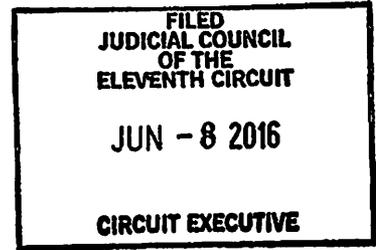


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111590125



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

ON PETITION FOR REVIEW*

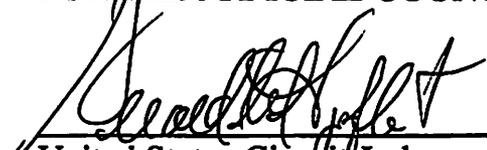
Before: TJOFLAT, HULL, MARCUS, WILSON, PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, RODGERS, and WATKINS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 17 December 2015, and of the petition for review filed by the complainant on 4 January 2016, 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 Lisa Godbey Wood did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 17 2015
Amy C. Nerenberg
Acting Clerk of Court

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

Judicial Complaint No. 11-15-90125

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 two supplemental statements. The filing of those supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in February 2015 Complainant filed a prisoner civil rights action, raising claims relating to the treatment he received at his place of incarceration, asserting that he was in imminent danger of serious physical injury, and requesting an injunction or restraining order. He filed a motion to proceed in forma pauperis (IFP), which the Subject Judge granted in late February 2015. Complainant also filed a motion to amend his complaint and multiple “Amendments.” In April 2015 the Subject Judge granted Complainant’s motion to amend his complaint and gave him 14 days to file any further desired amendments. After that, Complainant filed amendments to his complaint and other motions seeking various types of relief. In July 2015 he filed a Motion to Recuse the Subject Judge, alleging that he had exhibited bias and had acted with improper motives in connection with “inordinate delays” in ruling on motions.

In September 2015 the Subject Judge issued an order and report in which he: (1) determined that Complainant was a “frequent filer” under the Prison Litigation Reform Act; (2) vacated his previous order granting Complainant’s IFP motion; (3) denied the IFP motion; (4) recommended that the amended complaint be dismissed without

prejudice; and (5) recommended that Complainant's request for injunctive relief be denied. The Subject Judge determined that Complainant had not demonstrated that he was in imminent danger of serious physical injury at the time he signed his complaint or first amended complaint. In addition, the Subject Judge dismissed Complainant's outstanding motions, including the Motion to Recuse, as moot. After that, Complainant filed, among other things, objections to the Subject Judge's report and recommendation and multiple motions seeking injunctive and other types of relief.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge "may have had ex parte communications with at least two of the defendants . . . who told the Complainant that they knew he had sued them, albeit the complaint has not been served," which caused Complainant to be subjected to harassment and threats. Complainant then states that his allegations are based on the Subject Judge's "failure to make decisions/rulings in an exigent case of imminent danger of" Complainant being assaulted and injured. Finally, Complainant discusses the merits of certain claims he raised in the case, and he contends that he has been the "victim of a 'state-ordered' kidnapping for vindictive reasons"

Supplements

In his first supplemental statement, Complainant asserts that the Subject Judge acted as a "prejudiced biased, partial, oppressive tyrant" when he issued an order "after months of inordinate delays." Complainant asserts that the order was vindictive and hostile, and that the Subject Judge "violated his own orders" by vacating the previous order granting Complainant IFP status. He alleges that the Subject Judge "is guilty of compounding, being a party-to, and complicit-with murder attempts (aggravated assaults) on the Complainant, as well as kidnappings by" certain officials. Complainant states that he "suspects that [the Subject Judge] is unstable." Finally, he raises allegations concerning other judges and requests certain types of relief.

In his second supplemental statement, Complainant raises various allegations against individuals other than the Subject Judge. He also reiterates his allegation that the Subject Judge issued a "prejudiced/biased order," and he states that the Subject Judge "[a]pparently . . . enlisted" two other judges because they did not rule on motions to recuse.

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.

In addition, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, reports, and orders entered in the case, including any delay 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 engaged in improper *ex parte* communications, was biased or prejudiced against Complainant, issued a vindictive and hostile order, is “unstable,” 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