

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

111690051

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

ON PETITION FOR REVIEW*

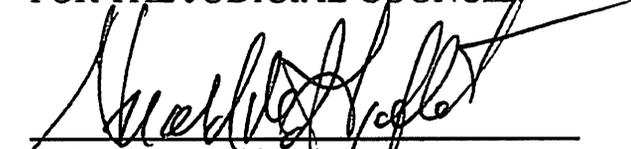
Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, and WATKINS, Chief District Judges.

Upon consideration of the petitioner’s complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Moore, and Land, the order of Chief Judge Ed Carnes filed on 25 August 2016, and of the petition for review filed by the complainant on 12 September 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**.

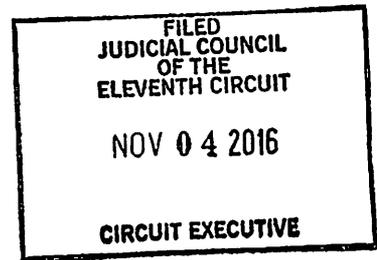
The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL



United States Circuit Judge

* Chief Circuit Judge Ed Carnes, Chief District Judge Rodgers, and Chief District Judge Wood did not take part in the review of this petition.



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The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

United States Circuit Judge

* Chief Circuit Judge Ed Carnes, Chief District Judge Rodgers, and Chief District Judge Wood did not take part in the review of this petition.

AUG 25 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90051 and 11-16-90052

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 January 2015 Complainant filed a lawsuit against multiple defendants, alleging that they had retaliated against him for acting as a government informant reporting crimes perpetrated by federal inmates and outside co-conspirators. In May 2015 Complainant filed an amended complaint and a supplement to that complaint. He then filed, among other things, a motion for the issuance of a subpoena and a motion to seal documents, and Judge _____ denied those motions.

In January 2016 Judge _____ entered an order and report in which he recommended that the complaint be dismissed, finding that Complainant was not entitled to relief on his claims against certain defendants and that his claims were barred by the applicable statute of limitations. Over Complainant’s objections, in February 2016 Judge _____ adopted the report and recommendation and dismissed Complainant’s complaint. Complainant then filed, among other things, a motion for reconsideration, which Judge _____ denied.

The record also shows that in April 2015 Complainant filed a 28 U.S.C. § 2241 petition for writ of habeas corpus in which he argued that he was promised a sentence reduction for his cooperation in reporting crimes against the United States in the form of a money laundering scheme perpetrated by federal inmates and outside co-conspirators.

After various proceedings, in March 2016 Judge _____ issued an order and report recommending that Complainant's § 2241 petition be dismissed, generally finding that he was not entitled to relief on his claims. Over Complainant's objections, in May 2016 Judge _____ adopted the report and recommendation and dismissed Complainant's § 2241 petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. He appears to allege that the Subject Judges violated 18 U.S.C. § 4 ("Misprision of felony") by failing to report the commission of a crime, and he contends that the Subject Judges were aware that he was acting as a government informant to collect information about a money laundering scheme conducted by federal inmates and others. In a footnote, he states that the Subject Judges were aware that government employees concealed crimes against the United States, and in another footnote, he states that Judge _____ denied his "requests for preliminary injunction, polygraph, and evidentiary hearings." He attached various documents to his Complaint.

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 Judges' official actions, findings, reports, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judges' 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 Judges violated 18 U.S.C. § 4 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