

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

OCT 27 2017

CIRCUIT EXECUTIVE

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

111790017

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

ON PETITION FOR REVIEW*

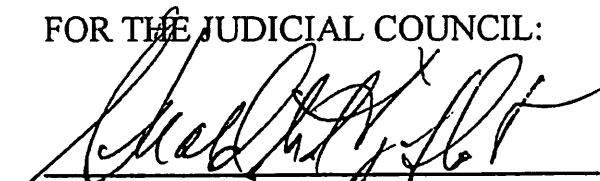
Before: TJOFLAT, HULL, MARCUS, WILSON, MARTIN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Rosenbaum, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 18 August 2017, and of the petition for review filed by the complainant on 25 August 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, Circuit Judge William H. Pryor Jr., and Circuit Judge Adalberto Jordán did not take part in the review of this petition.

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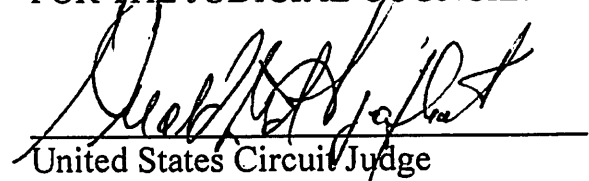
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United States Circuit Judge

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AUG 18 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90017 and 11-17-90018

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Circuit Judges _____ and _____ of the U.S. Court of Appeals for the _____ Circuit, 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 Circuit Judges _____ and _____ (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 Complainant filed in state court an employment discrimination action against a corporation, and in May 2015 the defendant removed the case to federal court. After various proceedings, in December 2015 a magistrate judge issued a report recommending that the complaint be dismissed because Complainant failed to pay a frivolity bond that the court had directed him to pay. In February 2016 the district judge adopted the report and recommendation, and a judgment was entered dismissing the case. Complainant filed a notice of appeal.

Complainant filed in this Court a motion to proceed in forma pauperis (IFP). In August 2016 Judge _____ entered an order denying the motion to proceed IFP because the appeal was frivolous, determining that the district court properly dismissed Complainant’s case for failure to pay the frivolity bond. The next month, this Court clerically dismissed the appeal for want of prosecution because Complainant failed to pay the filing and docketing fees. Complainant then filed, among other things, a motion for leave to file a motion for reconsideration out of time, which Judge _____ granted in November 2016.

After that, Complainant filed a motion for reconsideration of the order denying his IFP motion. He also filed other documents that were returned to him unfiled because they were not required or because the case was closed. In January 2017 a two-judge

panel comprised of the Subject Judges denied Complainant's motion for reconsideration, determining that he offered no new evidence or arguments of merit. A couple of weeks later, Complainant filed an amended petition for hearing and rehearing en banc. In April 2017 a three-judge panel that included the Subject Judges ordered that the amended petition be stricken because it was in violation of this Court's rules and directed the clerk to discard any further filings from Complainant in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the "merit panel . . . has an inappropriate working relationship with" two "case handler clerks" in connection with his case, which "disrupted the Administrative machinery of 11th Cir. [R.] 27-1, I.O.P. 1., among others that will be followed." Complainant states that "the panel either lost control over the general docket and appeal or other proceeding to single circuit judge, two-judge motion panel, and to the combined relationship between clerks and staff attorney," or that "such local Rule is a mirage given that there is no merit panel assigned to timely appeals of indigent and pro se filers to review rulings enter[ed] upon presubmission matters by a single or two-judge motion panel."

Complainant generally takes issue with the processing of his documents on appeal and describes his interaction with an employee of this Court concerning his filings. He alleges among other things, that the employee spoke to him in a "loud," "hostile," and "berating" tone. He contends that the exchange is evidence that the panel: (1) "failed to secure [his] privilege to Equal Justice"; (2) inappropriately allowed a clerk's office employee to provide him with legal advice and act without court order; (3) abdicated its "Article III responsibility"; (4) concealed the judges' identities; (5) "by proxy . . . displayed a lack of judicial temperament"; and (6) advocated for the defendant on appeal. Finally, he asserts that the Subject Judges did not deal with him evenhandedly, failed to maintain public confidence in the administration of justice, and brought this Court into disrepute. He attached 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 and orders entered in his appeal, 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 allegations that the Subject Judges 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