

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

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**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

APR 09 2018

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

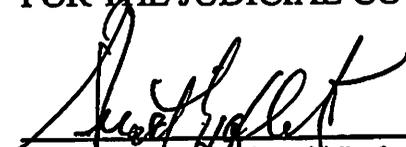
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 1 November 2017, and of the petition for review filed by the complainant on 6 December 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 did not take part in the review of this petition.

NOV 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90032

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 2015 Complainant filed a lawsuit against, among others, the City of _____, _____, Chief of Police of the _____ Police Department, and other officers with the _____ Police Department. The next month, Complainant filed a “Suggestion of Disqualification” as to the Subject Judge, noting that the Subject Judge’s spouse was affiliated with the _____ Police Department and that officers of the department were defendants in the case. In August 2015 the Subject Judge denied the Suggestion of Disqualification, finding her impartiality would not reasonably be questioned and noting that no member of her family currently was a _____ Police Officer or employed by the _____ Police Department or the City of _____.

After various proceedings, in April 2016 Complainant filed a second amended complaint in which she alleged that: (1) _____ and others conspired to participate in an unfounded investigation that led to Complainant being falsely arrested by the _____ Police Department in June and July 2011 following the execution of a search warrant at her residence; (2) “Sergeant _____” with the _____ Police Department performed “trash pulls” at Complainant’s residence, and the affidavit in support of the search warrant referenced those trash pulls; and (3) the search warrant was not supported by probable cause. The defendants filed motions to dismiss the second amended complaint.

¹ Sergeant _____ was not named as a defendant.

In February 2017 a magistrate judge issued a report recommending that all counts and defendants be dismissed from the case except for two claims against one defendant, finding that the second amended complaint failed to state a claim as to all counts except those two claims. Over Complainant's objections, in March 2017 the Subject Judge adopted the report and recommendation. The same day, Complainant filed a notice of appeal, which she withdrew the next day.

Complainant then filed a motion to disqualify the Subject Judge, arguing that she had a conflict of interest and there was an appearance of impropriety because her husband, _____ ("_____"), had "long standing close financial, social and professional relationships with more than half of the Defendants and Witnesses in this action." Complainant alleged that the Subject Judge concealed the conflict arising out of _____ 30-year employment with the _____ Police Department and his relationship with certain defendants and Sergeant _____. The same day, Complainant filed an amended motion to disqualify the Subject Judge, alleging that _____ had direct supervisory control over the criminal investigation of Complainant as described in her second amended complaint, and that the Subject Judge's decision not to recuse was the result of personal bias.

In early April 2017, Complainant filed a supplement to her amended motion to disqualify, which the Subject Judge ordered stricken because it was filed without leave of court and contained information that was exempt from public disclosure. Complainant filed a motion for reconsideration of the order striking her supplement, which the Subject Judge denied. The Subject Judge then entered an order denying Complainant's amended motion to disqualify and denying the initial motion to disqualify as moot, finding that a reasonable observer would not question her impartiality and stating that she had no personal bias or prejudice against a party. The order also provided, among other things, that: (1) the Subject Judge and _____ were divorced; (2) _____ was not employed by the _____ Police Department as of the filing of the case; and (3) there was no evidence that _____ was involved in the investigations, arrests, or prosecution of Complainant.

The next day, Complainant filed a second motion to disqualify, as well as a second amended motion to disqualify, arguing that the Subject Judge's order striking her supplement to the previous motion and denial of the motion for reconsideration of that order added to the appearance of impropriety. Complainant asserted that the stricken supplement showed: (1) that _____, through his consulting firm, benefitted financially from his business relationship with defendant _____ consulting firm; and (2) "an abrupt" voluntary dissolution of _____ consulting firm "immediately following" Complainant's allegations of a financial conflict between _____, _____, and their consulting firms. The Subject Judge denied the motions to

disqualify, generally finding no basis for recusal or disqualification and no evidence of any financial ties between the Subject Judge's former husband and any party to the case.

Complainant filed a notice of appeal, and in June 2017 this Court dismissed the appeal for lack of jurisdiction because the order being appealed was not final or otherwise immediately appealable. The record shows that in April 2017 Complainant filed in this Court a petition for writ of prohibition or, in the alternative, for writ of mandamus, generally taking issue with the Subject Judge's decision not to recuse from the case. In July 2017 this Court denied Complainant's petition for writ of mandamus, determining that she had an adequate alternative remedy for the mandamus relief she sought.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "had an inescapable and irrefutable conflict over presiding in" Complainant's case. She states, "Despite the conflict involving her husband, [the Subject Judge] failed to make full disclosures regarding her husband, her husband's employment as a high ranking police officer with the police department that I was suing, and most importantly of all, her husband's role as a supervising Police Major over the police officers who conducted trash pulls at my residence," which were used to secure a search warrant. Complainant then describes the allegations in her lawsuit, stating that she was arrested in June 2011 following a search of her residence, and that the search warrant affidavit made references to trash pulls by "Sergeant _____ and his fellow officer." She states that, at the time, Sergeant _____ "worked directly under [the Subject Judge's] husband, _____." Complainant then describes the proceedings and generally takes issue with the Subject Judge's orders denying the motions for disqualification.

Complainant states that she discovered that the Subject Judge's husband: (1) had a business that was "connected to many of the same circle of business owners as Defendant _____ on LinkedIn," and that _____ was a defendant in the lawsuit and former Chief of Police at the _____ Police Department; (2) "had Facebook connections with one of the police officers who was present and had executed the search warrant"; (3) was the "supervising Police Major over a Sergeant _____," who was involved in the trash pulls that were used to support the search warrant; (4) "had been the Police Major with supervisory role over the criminal investigation that was initiated against" her; and (5) had his retirement announced in _____.

Complainant states that in March 2017 she filed a notice to withdraw her notice of appeal so that she could file a motion to recuse the Subject Judge, and that, the next day, _____ submitted a request for voluntary dissolution of his consulting firm, as shown on the Department of State's website. Complainant notes that she raised this issue with the court, but that the Subject Judge immediately entered an order striking the document. Complainant then contends that certain defendants' response to the amended motion to

disqualify did not establish that the Subject Judge's husband had not been involved in supervising Sergeant _____ and other officers who had conducted the trash pulls. She contends that the Subject Judge's determination that the document showed that her husband clearly was not involved in the criminal investigation of Complainant was "an effort to further conceal and cover-up her conflict."

Complainant states that even if the Subject Judge had ruled in her favor, Complainant would still want her "off the case based on the degree of conflict and the nondisclosure, believing that if not now, at some point down the road, her bias would inevitably surface affecting her rulings" in the case. Finally, Complainant takes issue with the Subject Judge's following statement made at a status conference early in the case: "you are not a doctor in this courtroom." Complainant notes that, while she is a doctor and her complaint referred to her as a doctor, she did not refer to herself as a doctor at the hearing. She states that, at the time, she found the remark "highly odd, but brushed it aside, believing that it was probably an off the cuff comment. Now, I do not think so as much." She attached various documents to her 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.* (emphasis added). 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 official actions, findings, rulings, and orders entered in the case, including her orders denying the motions to disqualify, 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 had a personal bias against Complainant, acted to conceal a conflict of interest, 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**.

A handwritten signature in black ink, appearing to read 'J. L. Ames', is written over a horizontal line.

Chief Judge