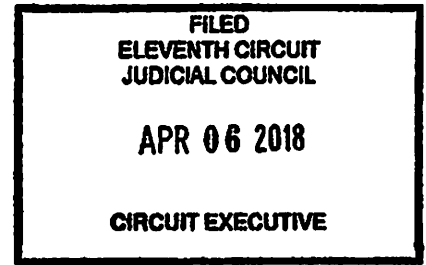


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111790042



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

ON PETITION FOR REVIEW*

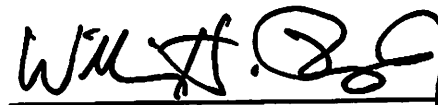
Before: WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges William Pryor, Julie Carnes, Jill Pryor, Land, and Rodgers, the order of Acting Chief Judge Charles Wilson filed on 4 January 2018, and of the petition for review filed by the complainant on 5 February 2018, 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:

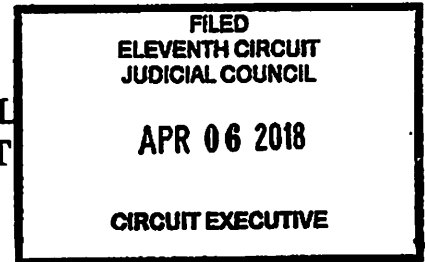


United States Circuit Judge

* Chief Circuit Judge Ed Carnes, Judge Gerald Tjoflat, Judge Stanley Marcus, and Judge Charles Wilson did not take part in the review of this petition.

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

111790043



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

ON PETITION FOR REVIEW*


Before: 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 William Pryor, Julie Carnes, Jill Pryor, Land, and Rodgers, the order of Acting Chief Judge Charles Wilson filed on 4 January 2018, and of the petition for review filed by the complainant on 5 February 2018, 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, Judge Gerald Tjoflat, Judge Stanley Marcus, and Judge Charles Wilson did not take part in the review of this petition.

JAN 04 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90042 and 11-17-90043

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 in 1998 Complainant filed a lawsuit against multiple defendants, raising claims arising out of his former employment. The district court dismissed the complaint, finding it was frivolous and failed to state a claim. In appeal no. _____, this Court vacated the dismissal, holding that Complainant stated a *prima facie* case as to certain claims, and should be given an opportunity to amend his complaint with respect to another claim. In September 2001, after Complainant filed a second amended complaint, the district court granted certain defendants’ motions to dismiss, and in March 2002 granted summary judgment in favor of the remaining defendants. In February 2003 this Court affirmed.

In March 2006 Complainant filed a lawsuit against various judges and other defendants, alleging in part that the judges lied and refused to acknowledge a “Case Proving Remand/Mandate Order” and “Fraudulent Concealment of the Case Proving Evidence.” The district court dismissed the complaint as frivolous. Complainant then filed motions seeking various types of relief, which the district court denied. He appealed and moved to proceed *in forma pauperis* (IFP) on appeal. In September 2007 Judge _____ entered an order denying the IFP motion because the appeal was frivolous, and a two-judge panel on which Judge _____ sat later denied a construed motion for reconsideration. In December 2007 a panel of this Court on which Judge _____ sat denied other motions Complainant filed and dismissed the appeal as frivolous.

In June 2008 Complainant filed a lawsuit against Judge _____ and others, alleging in part that judges conspired to conceal “case proving evidence” and disobeyed this Court’s mandate in an earlier appeal. In July 2008 the district court dismissed the complaint with prejudice on various grounds. In March 2011 this Court clerically dismissed Complainant’s appeal for want of prosecution. Complainant then filed an amended notice of appeal, which this Court dismissed for lack of jurisdiction.

Earlier Complaints

Complainant filed an earlier Complaint of Judicial Misconduct or Disability against a circuit judge, Complaint No. _____, alleging that the judge and others illegally covered up the decision in appeal no. _____ and other filings, and taking issue with the judge’s order in a previous Complaint of Judicial Misconduct or Disability matter. In March 2016 Judge _____, in his role as _____, dismissed Complaint No. _____ on the grounds that it was merits-related and based on allegations lacking sufficient evidence. The Judicial Council Review Panel affirmed the dismissal.

Complainant then filed a Complaint of Judicial Misconduct or Disability against Judge _____, Complaint No. _____, taking issue with his order in Complaint No. _____ and alleging that he engaged in “intentional lying” to “Cover-Up and Continue the Conspiracy.” Complainant also alleged that judges had ignored this Court’s “Mandate Order” in appeal no. _____, lied, destroyed filings, and refused to apply Fed. R. Civ. P. 37(b)(2)(C). In March 2017 Judge _____, in his role as _____, dismissed Complaint No. _____ on the grounds that it was merits-related and based on allegations lacking sufficient evidence. The Judicial Council Review Panel affirmed the dismissal.

Present Complaint

In the present Complaint of Judicial Misconduct or Disability, Complainant names the Subject Judges and “the entire _____ Circuit involved, et al,” and he alleges that the Subject Judges have lied and been part of a conspiracy to illegally cover up “Case Proving Evidence.” Complainant states that Judge _____ dismissal of Complaint No. _____ on the ground that it was merits-related was a lie, and he describes the allegations he made in that Complaint.

Complainant then alleges that various judges identified only by a single letter abused their discretion, illegally dismissed cases, covered up matters, stole filings, and acted illegally or without authority in connection with his prior cases and appeals. He asserts that unnamed judges ignored motions, refused to obey an order of this Court, and refused “to apply mandatory sanctions required by rule 37(b)(2)(C).” Complainant also appears to request that all of the judges of this Court recuse themselves from

consideration of his Complaint.¹ He attached various documents, including materials relating to Complaint Nos. _____ and _____.

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, the “Commentary on Rule 3” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint—even though it does not concern the judge’s rulings in Article III litigation.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those allegations and address only any allegations that have not previously been considered. *See* JCDR 11(c)(2).

Complainant’s allegations that judges engaged in misconduct in connection with his appeals and that Judge _____ engaged in misconduct in ruling on Complaint No. _____ have already been considered in connection with his earlier Complaints of Judicial Misconduct or Disability. To the extent Complainant raises allegations that have not previously been considered, his allegations that pertain to the substance of Judge _____ order in Complaint No. _____ are directly related to the merits of Judge _____ decisions or procedural rulings. Apart from the decisions or procedural rulings

¹ Complainant’s request is DENIED.

that Complainant challenges, he provides no credible facts or evidence in support of his claims that Judge _____ lied or that the Subject Judges 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**



Acting Chief Judge