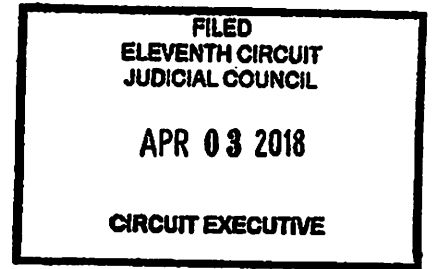


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111790062



**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 2 February 2018, and of the petition for review filed by the complainant on 12 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 did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90062

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Circuit Judge for
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
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 2006 Complainant pleaded guilty to drug and firearm-related charges, and he was sentenced to a total term of 180 months of imprisonment. After various proceedings, Complainant filed, among other things, a motion to reduce his sentence and a motion to withdraw his plea agreement. In October 2016 the district judge entered an order denying or dismissing various motions Complainant had filed, including the motions to reduce his sentence and to withdraw his plea agreement. The order also imposed an “anti-filing injunction” on Complainant in light of his “exceptional litigiousness.” Specifically, Complainant was: (1) enjoined from relitigating claims arising from the same set of facts as all of his earlier motions, and (2) required to seek leave of court before filing any future motions or appeals. Complainant appealed the district court’s order.

Complainant filed various motions with this Court, including a motion to proceed in forma pauperis. In June 2017 the Subject Judge issued an order denying Complainant’s motions, generally finding that he had not established that he was entitled to the relief sought. The Subject Judge also determined that in light of Complainant’s history of filing frivolous and duplicative motions, he had no non-frivolous argument that the district court had abused its discretion in issuing the filing injunction. Complainant filed a motion for reconsideration, which was denied by a two-judge panel that included the Subject Judge. In August 2017 this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's June 2017 order, alleging that the Subject Judge "passed" the "biased and racist" anti-filing injunction imposed by the district court, engaged in defamation, and violated JCDR 3(h)(1)(D), which states that cognizable misconduct includes treating litigants, attorneys, or others in a demonstrably egregious and hostile manner. Complainant also alleges that the Subject Judge abused the judicial process to unconstitutionally deny his right to seek redress. 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 Judge's orders entered in Complainant's appeal, 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 allegations that the Subject Judge engaged in defamation, treated him in a demonstrably egregious and hostile manner, abused the judicial process, 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