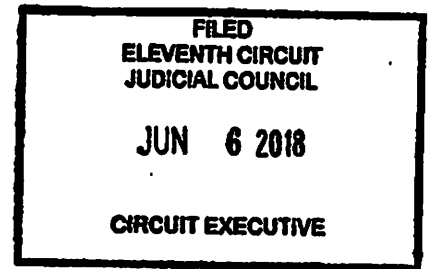


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111790069



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

ON PETITION FOR REVIEW*

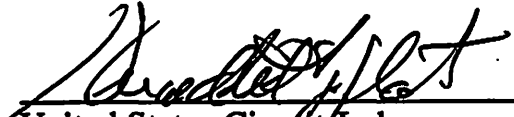
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS, WATKINS, DuBOSE, and HALL, Chief District Judges.

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 19 March 2018, and of the petition for review filed by the complainant on 12 April 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.

CONFIDENTIAL

MAR 19 2018

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

David J. Smith
Clerk

Judicial Complaint No. 11-17-90069

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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”).

As an initial matter, after Complainant filed his Complaint, he filed three supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2013 Complainant filed a prisoner civil rights action against multiple defendants, including certain unnamed individuals. After various proceedings, in April 2014 the Subject Judge entered an order directing Complainant to determine the names of the unnamed defendants and to file an amended complaint specifying the date on which the alleged events occurred. Complainant filed an amended complaint stating that he did not know the names of the individual defendants.

After that, the Subject Judge issued a report recommending that the amended complaint be dismissed for failure to state a claim on which relief could be granted, finding that: (1) the complaint required the court to speculate as to whether it was timely; and (2) assuming it was timely, Complainant failed to name the individual defendants. Over Complainant’s objections, the district judge adopted the report and recommendation and dismissed the case. Complainant appealed.

In January 2016 this Court reversed and remanded the case to the district court, holding that the complaint should not have been dismissed because: (1) it was not clear

from the face of the complaint that it was time-barred; and (2) the identity of the defendants could be obtained through discovery. In February 2016 the district judge re-opened the case, and Complainant filed multiple motions seeking various types of relief.

In January 2017 the Subject Judge entered an order ruling on Complainant's motions and directing him to complete and return certain forms and summonses. The next month, the Subject Judge issued a report recommending that the case be dismissed without prejudice due to Complainant's failure to comply with the order. In March 2017 the district judge adopted the report and recommendation and dismissed the case without prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that this Court directed the Subject Judge's court to obtain the names of certain defendants, but the Subject Judge took no action for more than a year and then ordered Complainant to provide the information. He also states that the U.S. Postal Service caused his mail to be late, which resulted in the case being dismissed.

Supplements

In Complainant's first supplemental statement, he reiterates his allegations and takes issue with the processing of his mail. In his second and third supplemental statements, he reiterates his allegations and seeks to expedite the case in the district court.

Discussion

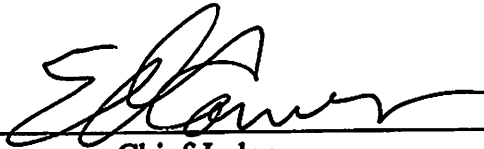
Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include "an allegation that is directly related to the merits of a decision or procedural ruling." The Rule provides that "[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, Rule 3(h)(3)(B) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 3” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”

All of Complainant’s allegations, including his allegations of delay, concern the substance of the Subject Judge’s official actions, findings, reports, and orders entered in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



Chief Judge