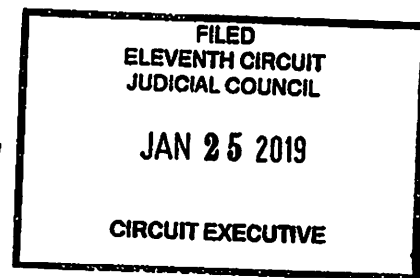


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90075



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

ON PETITION FOR REVIEW*

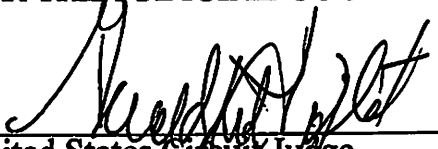
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 29 October 2018, and of the petition for review filed by the complainant on 13 November 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
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 25 2019

CIRCUIT EXECUTIVE

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

11-18-90076

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

ON PETITION FOR REVIEW*

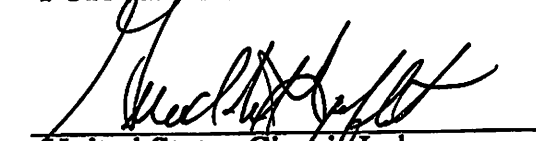
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 29 October 2018, and of the petition for review filed by the complainant on 13 November 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.

OCT 29 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90075 and 11-18-90076

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 _____ and United States District Judge _____ (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”).

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

Background

The record shows that in May 2015 Complainant filed a pro se 42 U.S.C. § 1983 prisoner civil rights action against one defendant, generally alleging that he was being denied certain services to which he was entitled. He also filed, among other things, a motion to proceed in forma pauperis (IFP), a petition for writ of mandamus, and a motion for an emergency temporary restraining order (TRO) in which he generally alleged he was in imminent danger of serious physical injury. In June 2015 Judge _____ entered an order: (1) denying Complainant’s IFP motion; (2) dismissing the § 1983 complaint without prejudice, finding Complainant had “three strikes” under 28 U.S.C. § 1915(g) and did not show he was in imminent danger of serious physical injury; and (3) denying the mandamus petition as moot. A few days later, Judge _____ denied the motion for a TRO, finding Complainant’s vague allegations of harm did not give rise to a claim of real and imminent harm. Complainant filed a notice of appeal.

Complainant then filed in the district court a motion to set aside the judgment, arguing that the court misrepresented that his mandamus action was a § 1983 complaint, which constituted fraud. In late July 2015 Judge _____ denied the motion, finding

that it contained no specific examples of fraud or misrepresentation on the court's part. Complainant filed another notice of appeal, and his appeal was later clerically dismissed for want of prosecution.

In February 2017, this Court: (1) vacated the district court's judgment of dismissal; (2) reversed the order denying Complainant leave to proceed IFP and dismissing his complaint; and (3) remanded to the district court with instructions to grant leave to proceed IFP and for further proceedings. This Court held that Complainant had sufficiently alleged that he faced imminent danger of serious physical injury. Complainant then filed in the district court a motion for the appointment of counsel. In April 2017 Judge _____ issued an order: (1) granting Complainant's IFP motion; (2) denying his motion for appointment of counsel; and (3) directing him to submit a recast complaint listing all the defendants and stating the relief sought and the additional facts that he wished to make a part of the proceedings.

The next month, Complainant filed a recast complaint against multiple defendants, raising various claims and alleging in part that defendants had conspired to deny his rights and had retaliated against him for reporting unlawful conduct at his place of incarceration. He later filed a motion to transfer the case and for the appointment of counsel. In August 2017 Judge _____ issued an order and recommendation in which he: (1) found that Complainant's retaliation claims against three defendants should proceed for further factual development; (2) recommended that the remaining claims be dismissed without prejudice for failure to state a claim; and (3) denied the motion to transfer and for the appointment of counsel. After that, Complainant filed objections to the report and recommendation and multiple motions seeking various types of relief, including a motion to reinstate his request for a TRO, preliminary injunction, and the appointment of counsel.

In January 2018 Judge _____ entered an order and recommendation that: (1) stated that many of Complainant's motions were "written in an incoherent and unintelligible manner"; (2) recommended that his motion for injunctive relief be denied because he had not shown he was entitled to that relief; (3) granted in part a motion seeking to depose certain witnesses; and (4) denied other motions. Later that month, Complainant filed a motion seeking the disqualification of the Subject Judges, generally alleging that they had "an apparent unlawful bias and prejudice against" him "resulting from matters not in evidence." In March 2018 three defendants filed two separate motions for summary judgment.

In April 2018 the Subject Judges issued orders denying Complainant's motion seeking their recusal from the case, generally finding that he did not establish a basis for their recusal. Judge _____ also issued an order in which he, among other things: (1) adopted Judge _____ August 2017 and January 2018 reports and recommendations; (2) ruled that Complainant's retaliation claims against three defendants could proceed; (3) dismissed his remaining claims without prejudice; and (4) denied his motion seeking

a TRO. Complainant filed a motion for reconsideration of the order dismissing his claims as well as objections to the orders denying his motions seeking disqualification.

In May 2018 Judge _____ entered an order denying Complainant's motion for reconsideration and overruling his objections, generally finding that he did not establish a basis for reconsideration of the earlier orders. Complainant filed a request for an interlocutory appeal of the order and a motion to appeal IFP. In July 2018 Judge _____ denied the motion for an interlocutory appeal and denied the IFP motion because the appeal was frivolous. The order described previous motions Complainant had filed and the rulings on those motions, noting in part that Complainant filed a motion for the appointment of counsel that had been denied. Also in July 2018 Judge _____ issued an order denying various motions Complainant had filed and cautioning him that the docket reflected excessive filing of frivolous documents, motions, and other papers. Complainant filed objections to that order, arguing that it was an attempt to prejudice his case. In August 2018 his appeal was dismissed in part for lack of jurisdiction.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges: (1) had an actual and apparent bias against him; (2) took actions in the case for political reasons; (3) failed to act despite knowing that defendants were engaged in a conspiracy to murder him; (4) refused to afford him proper treatment as a pro se litigant; (5) prevented him from receiving a full and fair opportunity to present his case or have his pleadings considered; (6) refused to appoint him counsel or grant him any relief; and (7) endorsed illegal conduct by the defendants through inaction. Complainant also states that the defendants told him they were in collusion with the Subject Judges and that the Subject Judges "have been bought with politics, money, and other emoluments" to prevent the case from going before a jury. He attached various documents to his Complaint.

Supplements

In his first supplemental statement, Complainant asserts that Judge _____ "attempt[ed] to sabotage" the interlocutory appeal and committed fraud. Complainant states that Judge _____ attempted to mislead this Court by stating that Complainant sought the appeal based on the denial of his request for counsel, which was a "lie." He asserts that this shows that Judge _____ was biased and prejudiced against him.

In his second supplemental statement, Complainant generally reiterates his allegations against Judge _____, stating in part that Judge _____ was biased against him, issued a fraudulent order, and "attempted to derail" his interlocutory appeal. In his third supplement, Complainant generally reiterates his allegations against Judge _____ and alleges that he used his judicial office for political reasons to aid a conspiracy by government officials to deprive Complainant of his constitutional rights.

In his fourth supplement, Complainant: (1) reiterates his allegations; (2) alleges that the Subject Judges have engaged in a pattern of refusing to act in an expeditious manner and have demonstrated indifference to his well-being; (3) asserts that Judge _____ accepted emoluments from, and colluded with, the defendants; and (4) contends that the Subject Judges are biased and prejudiced against him. In his fifth supplement, Complainant states he has reason to believe that Judge _____ issued an order to the wardens at his places of incarceration directing that his legal mail be opened and that he be refused indigent postage, “according to correctional staff” of one warden.

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.”

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, rulings, findings, reports, recommendations, and orders in the case, 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 were biased or prejudiced against him, acted with an illicit or improper motive, colluded with the defendants or accepted emoluments from them, committed fraud, 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