

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

11-18-90105

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

FEB 14 2019

CIRCUIT EXECUTIVE

**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 06 December 2018, and of the petition for review filed by the complainant on 26 December 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:

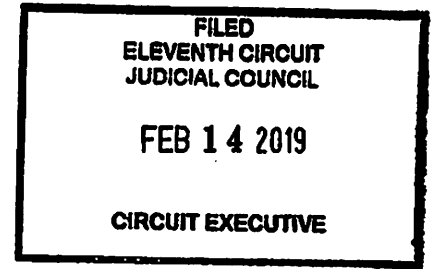


United States Circuit Judge

- * Chief Circuit Judge Ed Carnes did not take part in the review of this petition.
- ** Former Chief District Judge W. Keith Watkins is no longer a member of the Council.

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

11-18-90106



**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 06 December 2018, and of the petition for review filed by the complainant on 26 December 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.
- ** Former Chief District Judge W. Keith Watkins is no longer a member of the Council.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 06 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90105 and 11-18-90106

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 two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in September 2017 Complainant filed a lawsuit against a State, generally alleging that it had violated his constitutional rights in connection with certain criminal proceedings. He also filed a motion for leave to proceed in forma pauperis (IFP). After that, he filed, among other things, a motion for summary judgment and a request for service of summons. In May 2018 Judge _____ issued a report recommending that the complaint be dismissed with prejudice, determining that the defendant was not a “person” liable for damages under 42 U.S.C. § 1983 and was absolutely immune from such damages.

After that, Complainant filed a motion for a default judgment and a “Demand for Judgment Relief” In June 2018 Judge _____ issued an order adopting Judge _____ report and recommendation, dismissing the complaint with prejudice, and terminating all pending motions as moot. Complainant filed a “Response to a Bias Dismissal” in which he alleged that Judge _____ had made a decision based on bias,

prejudice, and racism. Judge _____ issued an order treating the filing as a motion for reconsideration and denying it.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first complains that the Subject Judges issued rulings “with prejudice” and disregarded facts. He complains about delay in the case, and he alleges that Judge _____ failed to respond to certain filings, failed to comply with Fed. R. Civ. P. 16, and engaged in “unnecessary procrastinating by withholding” Complainant’s IFP affidavit for eight months. Complainant states, “This is a perfect example of corruption and discrimination” in the particular division of the district court. He also takes issue with the defendant’s actions and complains about medical treatment he received. He attached documents to his Complaint.

Supplements

In his first supplemental statement, Complainant generally takes issue with the defendant’s actions and with medical care he received. He also alleges that the Subject Judges “failed in a conspiracy to hide this injustice from the public by withholding the summons” In the second supplement, Complainant alleges that the Subject Judges violated their oaths of office, and he takes issue with the actions of the defendant and another individual.

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:

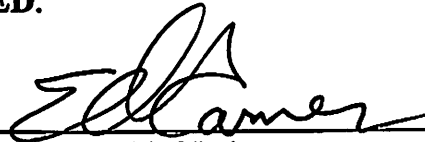
Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint 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, findings, 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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judges were biased or prejudiced against him, were part of a conspiracy, violated their oaths of office, 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 'Ed Stamer', is written over a horizontal line.

Chief Judge