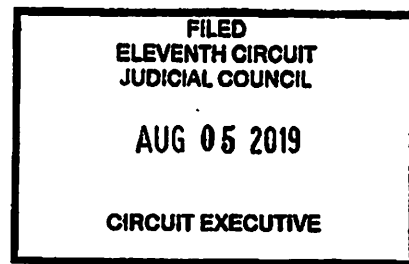


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90123



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

ON PETITION FOR REVIEW*

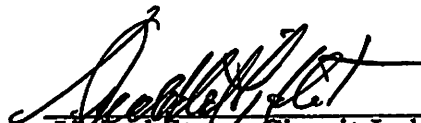
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS,** Chief District Judges.

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 11 January 2019, and of the petition for review filed by the complainant on 31 January 2019, 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.
- ** Judge Emily Marks is Acting Chief Judge.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 11 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90123

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”).

Background

The record shows that in November 2016 Complainant filed a civil rights action against multiple defendants, generally alleging that the defendants had violated his constitutional rights. He also filed a motion to proceed in forma pauperis, which the Subject Judge granted. The Subject Judge then issued an order directing Complainant to file an amended complaint by a certain date, noting that it was not clear in the initial complaint what constitutional violations he was claiming, nor how the parties and events were related. In December 2016 Complainant filed a motion to disqualify the Subject Judge, and he generally took issue with the Subject Judge’s rulings and orders in the case and in previous cases. The Subject Judge denied the motion to disqualify, finding that Complainant had failed to establish a basis for his recusal.

After that, Complainant filed, among other things, a motion for extension of time to amend his complaint, asserting that he had been transferred to a different facility and his legal materials had been seized. In January 2017 the Subject Judge granted the motion in part, noting that Complainant’s assertions about his legal materials were conclusory, but giving him additional time to file an amended complaint. In February 2017 the Subject Judge issued a report recommending that the case be dismissed without prejudice because Complainant had failed to meet the deadline for filing an amended complaint. Over Complainant’s objections, the district judge adopted the Subject Judge’s

report and dismissed the case without prejudice. Complainant appealed, and this Court later dismissed the appeal as frivolous.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “refused to conduct a meaningful screen” of his complaint, and he takes issue with the Subject Judge’s order requiring him to file an amended complaint, contending that the order contained false statements about the contents of the complaint. He complains about treatment that he received at his places of incarceration and the processing of documents he submitted to the courts. He alleges that the Subject Judge treated him in a demonstrably egregious and hostile manner, discriminated against him due to his ethnicity, retaliated against him, deviated from binding authority, denied him access to the courts, and allowed prison officials to subject him to unconstitutional conditions of confinement.

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 official actions, findings, orders, report, and recommendations in the case, 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 claims that the Subject Judge made false statements, treated him in a demonstrably egregious and hostile manner, discriminated or retaliated against him, 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