

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

11-18-90127

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

APR 11 2019

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

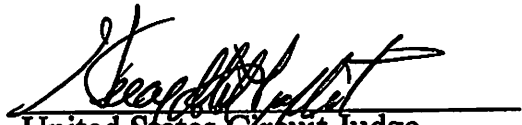
Before: TJOFLAT, MARCUS, WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS,** Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Jordán, 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 22 February 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 and Circuit Judge William H. Pryor Jr. 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. 11-18-90127

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 April 2017 Complainant filed an amended civil rights
complaint raising claims against multiple defendants related to an encounter he had with
law enforcement officers. In February 2018 the district court dismissed the amended
complaint, generally finding that Complainant had failed to establish he was entitled to
relief on his claims and that he had been lawfully stopped and frisked by officers.
Complainant appealed, and the appeal was docketed in March 2018.

In April 2018 Complainant filed in this Court a motion to proceed in forma
pauperis (IFP). That same month, the appellees filed a Certificate of Interested Persons
and Corporate Disclosure Statement (CIP). In May 2018 the Clerk’s Office notified the
appellees that they had failed to complete the Web-Based CIP and failed to file the CIP
electronically. After that, Complainant filed a motion for summary judgment, a
supplemental motion for summary judgment, and a motion to dismiss the appeal, arguing
that he was entitled to relief because the appellees had failed to comply with the rules
governing the filing of a CIP.

In late June 2018 the Subject Judge entered an order denying Complainant’s IFP
motion because the appeal was frivolous, denying his motion for summary judgment, and
denying his motion to dismiss. Complainant then filed, among other things, a motion for
reconsideration, an amended motion for reconsideration, and a notice of default, and in
August 2018 a two-judge panel that included the Subject Judge denied Complainant’s

amended motion for reconsideration. The next month, Complainant's appeal was clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge was aware that opposing counsel failed to timely file a CIP in compliance with this Court's rules, and he alleges the Subject Judge denied him due process by not entering a default judgment in his favor. Complainant asserts that the Subject Judge "violate[d] the public trust" by not complying this Court's rules. He also contends that he should have prevailed on the merits of his case. Complainant alleges that the Subject Judge treated him in a demonstrably egregious and hostile manner and violated the Code of Conduct for United States Judges.

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 and 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 claims that the Subject Judge treated him in a demonstrably egregious and hostile manner, violated the Code of Conduct for United States Judges, 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 "S. K. Lane", written in a cursive style.

Chief Judge