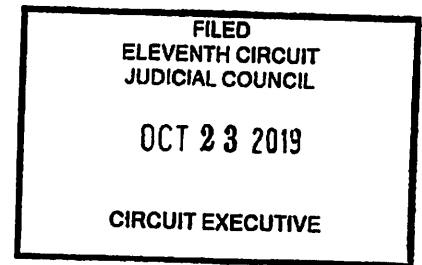


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90150



**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 8 July 2019, and of the petition for review filed by the complainant on 21 August 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:

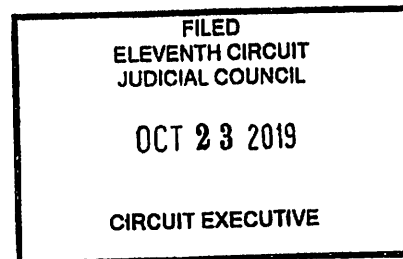


United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

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

11-18-90151



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

ON PETITION FOR REVIEW*

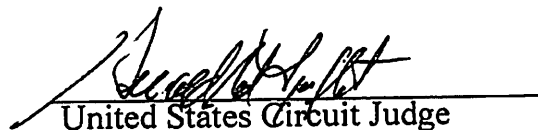
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 8 July 2019, and of the petition for review filed by the complainant on 21 August 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.

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 08 2019

David J. Smith
Clerk

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

Judicial Complaint Nos. 11-18-90150 and 11-18-90151

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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in January 2018 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. Judge _____ then entered an order taking judicial notice of online state trial and appellate court dockets. Later in January 2018 Judge _____ issued a report recommending that Complainant’s § 2254 petition be dismissed as time-barred. Over Complainant’s objections, in February 2018 Judge _____ entered an order approving the report, dismissing the § 2254 petition as time-barred, and finding that, in any event, Complainant was not entitled to relief on his claims.

Complainant appealed and filed a motion for a certificate of appealability in this Court. In July 2018 this Court granted Complainant’s motion for a COA as to two issues, involving whether his § 2254 petition was untimely and whether the petition stated a valid claim. In its answer brief, the State argued in part that any error the district court committed was harmless.

The record also shows that in September 2018 Complainant filed a 42 U.S.C. § 1983 complaint against multiple defendants, raising claims in connection with his arrest

and prosecution in state court, and the Subject Judges were assigned to the case. Judge _____ entered an order striking the complaint for failure to comply with applicable rules and directing Complainant to file an amended complaint. In October 2018 Complainant filed an amended complaint and a motion to proceed in forma pauperis (IFP), and Judge _____ granted the IFP motion.

The next month, Complainant filed, among other things, a motion to recuse the Subject Judges, alleging that they had a conflict of interest because of their involvement in the related § 2254 proceedings. He also alleged, based on this Court's grant of the COA, that the Subject Judges had engaged in "prejudicial, unconstitutional, and partial conduct" in the § 2254 proceedings. On the same day, Judge _____ entered an order denying the motion to recuse, generally finding that Complainant did not establish a basis for recusal. Complainant filed a "Motion for Rehearing" and an objection to the order, arguing that the Subject Judges had first-hand knowledge of disputed evidentiary facts. Judge _____ denied the motion for reconsideration for the reasons stated in his earlier order, and Judge _____ denied and overruled Complainant's objection.

In late November 2018 Judge _____ issued a report recommending that Complainant's amended § 1983 complaint be dismissed with prejudice, finding it failed to state a claim on which relief could be granted and was otherwise barred by Heck v. Humphrey, 512 U.S. 477 (1994). Over Complainant's objections, in January 2019 Judge _____ entered an order approving Judge _____ report and dismissing the amended complaint with prejudice.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally takes issue with the Subject Judges' decision not to recuse from his § 1983 case in light of their involvement in his habeas case. He alleges the Subject Judges have personal knowledge of disputed evidentiary facts concerning the proceedings, which brings into question their ability to be fair and impartial.

Complainant then asserts that, in the State's response in the habeas case, it admitted that there were constitutional and civil rights violations in his criminal case. He states that this: (1) "completely undermines" the denial of his habeas petition; (2) "renders such ruling . . . virtually invalid and prejudicial"; and (3) "portrays" the Subject Judges as either "Co-conspirators to Deprive Rights" or "Disabled to officiate their positions fairly and or impartially." Finally, Complainant states that Judge _____ "insistence to not be recused" from the § 1983 case "raises suspicion" as to his motives. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant alleges the Subject Judges "appear or have continued to join" the State in perpetuating a crime by: (1) not recusing themselves;

(2) not reporting misconduct of state officials and colleagues; (3) fraudulently concealing evidence; and (4) “[r]efusing to rectify” constitutional and civil rights violations committed by state actors. He also asserts the Subject Judges were part of a conspiracy, violated their oaths of office, and were not impartial. He attached the January 2019 order dismissing his amended § 1983 complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, reports, recommendations, and orders in the cases, including their decisions not to recuse, 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 claims that the Subject Judges were part of a conspiracy, were not impartial, concealed evidence, 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**.



Chief Judge