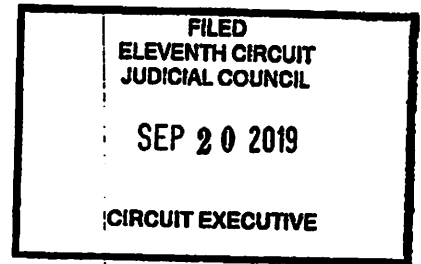


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90155



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

ON PETITION FOR REVIEW*

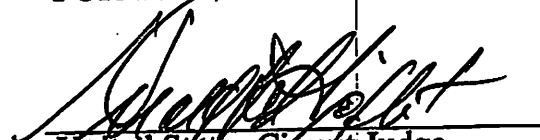
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 19 July 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**.

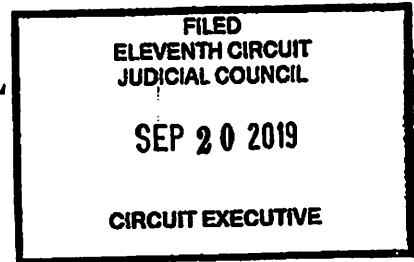
FOR THE JUDICIAL COUNCIL:


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**

11-18-90156



**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 19 July 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.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 08 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90155 and 11-18-90156

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. District Judges _____ and _____ 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 District Judges _____ and _____ (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”).

Background

The record shows that in January 2017 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging a certain state court conviction. After various proceedings, in October 2017 a district judge who is not one of the Subject Judges dismissed the § 2254 petition, finding that Complainant was not entitled to relief and that he had failed to pay the filing fee or seek permission to proceed in forma pauperis (IFP) in violation of a magistrate judge’s order. Complainant appealed and filed a motion to proceed IFP on appeal. In November 2017 the district judge denied Complainant’s motion to appeal IFP, finding that he had failed to submit a statement of good faith issues to be appealed and, in any event, the appeal was not taken in good faith. Complainant filed a motion for reconsideration. In March 2018 this Court denied Complainant’s motion for a certificate of appealability because he failed to make the requisite showing.

In July 2018 the case in the district court was reassigned to Judge _____. The next month, Judge _____ denied Complainant’s motion for reconsideration of the order denying his motion to appeal IFP, finding that he still had not attached the required affidavit and had no reasonable basis to appeal. After that, Complainant filed additional motions. In November 2018 Judge _____ entered an order striking the motions, noting that the court had ordered in other cases that any additional pleadings from

Complainant related to cases that were already closed would be returned to him unfiled because of his “repeatedly filing entirely frivolous motions.”

The record also shows that in February 2017 Complainant filed a § 2254 petition naming two federal judges as respondents. The next month, a magistrate judge entered an order directing the clerk to convert the action to a federal civil rights action and recusing herself from the case. After that, a different magistrate judge issued a report recommending that the case be dismissed under the “three strikes” provision of 28 U.S.C. § 1915(g). In June 2017 a district judge who is not one of the Subject Judges entered an order adopting the report and recommendation and dismissing the case. Complainant then filed multiple motions seeking various types of relief, which the district judge denied, and Complainant appealed.

In October 2017 Complainant filed a motion to proceed IFP on appeal, and the district judge denied the motion because Complainant failed to submit a statement of good faith issues to be appealed and, in any event, the appeal was not taken in good faith. After that, Complainant filed a motion for reconsideration and a motion to reopen the case. In July 2018 the case was reassigned to Judge _____. In September 2018 Judge _____ denied the motion for reconsideration and dismissed the motion to reopen. Complainant filed a motion to set aside Judge _____ order. In November 2018 Judge _____ entered an order denying the motion to set aside and directing the clerk to refuse and return to Complainant any additional pleadings related to the case because of his “demonstrated propensity for filing entirely frivolous pleadings.” Complainant filed three appeals in the case, all of which this Court clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judges “took hostile positions” against him and “refused to review the case” because he filed Complaints of Judicial Misconduct or Disability against other judges. He alleges, “This bias and prejudice is rooted in their natural racism” and discriminatory attitudes.

Complainant asserts that in November 2018 the Subject Judges “based on ex parte communications” issued identical orders at the same time in his two cases. Complainant complain that the Subject Judges: (1) abdicated their responsibility to adjudicate the cases; (2) violated Complainant’s right to meaningful access to the courts; (3) and violated his constitutional rights “for chilling effect.” Finally, he asserts that the reassignment of his cases to the Subject Judges violated the “General Succession Act” and the “Appointments Clause of the Constitution.”

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, rulings, findings, and orders in his cases, 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 retaliated against him for filing a Complaint of Judicial Misconduct or Disability, were biased or prejudiced against him, had a racial bias, engaged in improper ex parte communications, 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