

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JUN 14 2019

CIRCUIT EXECUTIVE

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

11-18-90170

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

ON PETITION FOR REVIEW*

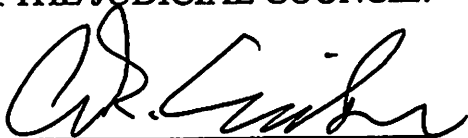
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS,** Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Newsom, Land, and Walker, the order of Acting Chief Judge Gerald Bard Tjoflat, filed on 9 April 2019, and of the petition for review filed by the complainant on 29 April 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 Gerald Bard Tjoflat 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

APR 09 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90170

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 August 2017 Complainant filed a petition for writ of habeas corpus that was docketed as a 28 U.S.C. § 2254 petition, and he paid the filing fee the next month. After various proceedings, in July 2018 the district court entered an order dismissing the § 2254 petition, denying Complainant a certificate of appealability (COA), and denying him leave to appeal in forma pauperis (IFP). Complainant filed a motion to alter or amend the judgment, which the district court denied.

Complainant then filed a notice of appeal, and he filed in this Court a motion for a COA and a motion to proceed IFP. In early September 2018 this Court sent Complainant a letter stating that, pursuant to 28 U.S.C. § 1915, he must submit a certified statement showing all receipts, expenditures, and balances during the last six months in his institutional accounts. Later that month, Complainant filed a motion for extension of time to file the financial statement in which he argued the financial statement was “inapplicable to habeas corpus cases.”

In October 2018 a circuit judge who is not the Subject Judge granted Complainant’s request for an extension of time to provide the financial statement and confirmed that he must provide the statement under § 1915. After that, Complainant filed, among other things, a “Petition for Rehearing” in which he argued that he was not required to pay the filing fee or to provide a financial statement. In November 2018 this Court clerically dismissed the appeal for want of prosecution because Complainant failed

to timely file the financial statement. Complainant then submitted a motion to recall the mandate and to reinstate the appeal, and this Court returned the document unfiled because he had not cured the deficiency of failing to provide the financial statement.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the basis of his Complaint is “intrinsic fraud.” He alleges the Subject Judge agreed with the clerk of this Court to commit fraud through the “operation of a systematic policy” to dismiss state prisoners’ habeas appeals by requiring an “unauthorized additional filing fee,” in violation of certain statutes. Complainant asserts the clerk, “under orders of” the Subject Judge, dismissed his appeal without authority. He also complains that his motion to recall the mandate and to reinstate the appeal were returned unfiled under a “historical fraudulent policy.” Finally, he states the “unauthorized policy to systematically suspend habeas corpus appeals violates the fair administration of justice.” He attached documents to his Complaint.

Discussion

Complainant provides no credible facts or evidence in support of his allegations that the Subject Judge committed fraud or otherwise engaged in misconduct.

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 that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(iii) and Rule 11(c)(1)(D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.


Acting Chief Judge