

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL
JUL 1 2019
CIRCUIT EXECUTIVE

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

11-18-90171

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

ON PETITION FOR REVIEW*

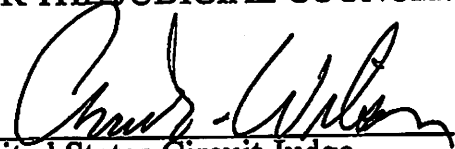
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, and MARKS,** Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Newsom, Land, and Merryday, 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, Circuit Judge Gerald Bard Tjoflat, and Chief District Judge Mark E. Walker did not take part in the review of this petition.
** Judge Emily Marks is Acting Chief Judge.

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90171

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

APR 09 2019

**David J. Smith
Clerk**

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

Although Complainant does not identify a specific case involving the Subject Judge, the record shows that the Subject Judge has been the assigned magistrate judge in multiple habeas corpus cases filed by Complainant. For example, in September 2016 Complainant filed a petition for writ of habeas corpus that was docketed as a 28 U.S.C. § 2254 petition. The Subject Judge then entered an order directing Complainant to, among other things, file an amended petition on the court’s form for use in § 2254 cases. Complainant filed a motion to alter or amend the order, stating his petition was filed under 28 U.S.C. § 2241, and the Subject Judge denied the motion, finding the requirements of § 2254 applied.

In October 2016 Complainant filed an amended § 2241 petition in which he contended that the Subject Judge and others had suspended state prisoners’ rights to file § 2241 petitions to cover up fraud, and that federal and state officials had ignored exculpatory facts and records. Later that month, the Subject Judge issued a report recommending that the amended petition be dismissed because Complainant could not proceed on the claims raised in the petition. In November 2016 a district judge adopted the Subject Judge’s report and recommendation and dismissed the amended petition.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the basis of his Complaint is “intrinsic fraud historically committed” by the Subject Judge.

He alleges the Subject Judge has agreed with state officials to conceal and cover up illegal court processes and illegal convictions through fraud, and that the Subject Judge's fraudulent activity has prohibited state prisoners from obtaining habeas corpus relief under § 2241. Complainant also alleges the Subject Judge "by fraud" agreed with state officials to ignore certain court records in his case. Finally, he states that the Subject Judge "through fraud concludes the Federal Constitution does not apply and she shall not enforce the laws." He attached documents to his 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 Judge's official actions, findings, orders, and reports in Complainant's cases, 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 committed fraud 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**.



Acting Chief Judge