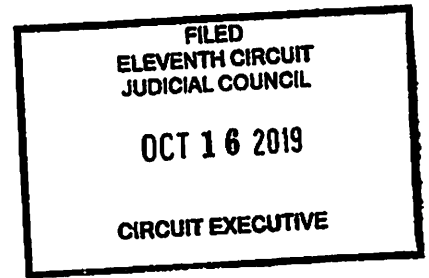


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90008



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

ON PETITION FOR REVIEW*

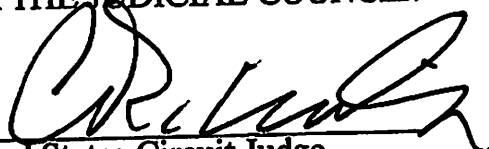
Before: WILSON, WILLIAM PRYOR, NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Newsom, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 08 August 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**.

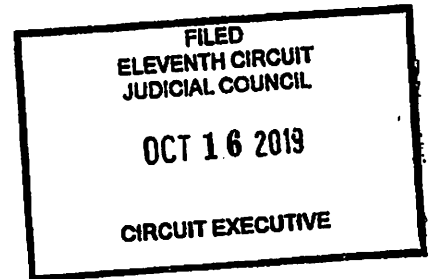
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge Ed Carnes, as well as Circuit Judges Gerald Bard Tjoflat, Stanley Marcus, Beverly B. Martin, Adalberto Jordan, Robin S. Rosenbaum, and Jill A. Pryor did not take part in the review of this petition.

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

11-19-90009



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

ON PETITION FOR REVIEW*

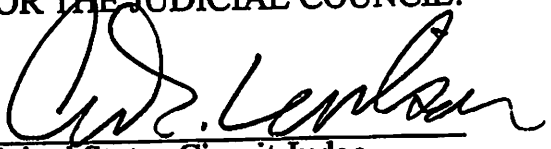
Before: WILSON, WILLIAM PRYOR, NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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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, as well as Circuit Judges Gerald Bard Tjoflat, Stanley Marcus, Beverly B. Martin, Adalberto Jordan, Robin S. Rosenbaum, and Jill A. Pryor did not take part in the review of this petition.

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 08 2019

David J. Smith
Clerk

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

Judicial Complaint Nos. 11-19-90008 and 11-19-90009

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”).

As an initial matter, after Complainant filed his Complaint, he filed eight supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2018 Complainant filed an amended 28 U.S.C. § 2254 petition for writ of habeas corpus challenging a certain state court conviction. The respondents filed a motion to dismiss the petition due to Complainant’s pending state court challenges to his conviction and sentence. After various proceedings, in October 2018 Judge _____ entered an order denying Complainant’s § 2254 petition and dismissing the case without prejudice because he was challenging the same conviction in state court. Complainant then filed multiple motions seeking various types of relief, including a motion for rehearing in which he alleged that Judge _____ committed fraud. In November 2018 Judge _____ entered an order denying Complainant’s motion for rehearing, noting he still had a proceeding pending in state court related to the underlying conviction being challenged.

In January 2019 Complainant filed a motion to disqualify Judge _____, which a magistrate judge denied. After that, Complainant filed, among other things, multiple motions to vacate orders issued in the case, which Judge _____ or the magistrate judge denied. In April 2019 Complainant filed a “Motion to Disqualify /

Motion to Vacate” in which he alleged that Judge _____ and the magistrate judge were biased against him and had engaged in improper conduct. The magistrate judge entered an order denying the motion and directing Complainant to show cause why sanctions should not be imposed as a result of his “continued frivolous, abusive, duplicative, or redundant filings.”

Complainant filed multiple notices of appeal in the case, and this Court dismissed one appeal for lack of jurisdiction and clerically dismissed two appeals for want of prosecution. In addition, Complainant filed in this Court a petition for writ of prohibition pertaining to the case, which this Court clerically dismissed for want of prosecution.

The record also shows that in June 2018 Complainant filed a § 2254 petition challenging certain state court convictions. After that, he filed numerous motions and petitions seeking various types of relief, including a motion to disqualify Judge _____, and Judge _____ denied the motions and petitions, generally finding Complainant did not establish he was entitled to the relief sought. In one order, Judge _____ directed Complainant to show cause why the action should not be dismissed in light of pending state court proceedings related to the convictions being challenged.

Complainant filed a response in which he argued there were no pending cases in state court. He then filed, among other things, motions for judgment on the pleadings and a motion to disqualify, and Judge _____ denied those motions. In January 2019 the respondents filed a response in which they argued Complainant’s § 2254 petition should be dismissed because he had a case pending in state court. Complainant filed an objection in which he argued that no challenge to the convictions remained pending in state court.

Complainant filed multiple notices of appeal in the case, and this Court dismissed one appeal for lack of jurisdiction and clerically dismissed another for want of prosecution. Complainant also filed in this Court a petition for writ of mandamus, which this Court clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant “alleges intentional misconstruction and conduct to inhibit” his “due process procedural rights . . . at the behest of the state.” He cites certain filings in his cases in support of his allegations.

Supplements

In his first supplemental statement, Complainant complains that the district court, “for unknown illogical reasons,” erroneously docketed a “Complaint Pursuant to Section

351” he filed as a notice of appeal in his two cases. He also takes issue with the filing and docketing of other pleadings he submitted to the district court and this Court. He states that it appears “additional fraud(s)” have been committed by the district court or that the court “may simply be dilatory.”

In his second supplement, Complainant reiterates his allegations that documents he submitted were intentionally misconstrued and misfiled, and he complains that documents relating to his Complaint of Judicial Misconduct or Disability were not properly filed. He states that “the court” continues to engage in misconduct and “a complete usurpation of power violating the separation of powers doctrine.” In an attached document, he complains that one of his cases was assigned to a new magistrate judge but that not all pending motions were referred to that judge. He also complains about delay in the docketing of a motion that he filed.

In the third supplement, Complainant generally alleges that the district court and others intentionally and fraudulently misconstrued and misfiled his documents. In the fourth, fifth, sixth, and seventh supplements, Complainant generally reiterates his allegations that his documents have been intentionally misconstrued and mishandled. Also in the seventh supplement, Complainant appears to allege the Subject Judges engaged in, among other things, fraud and racketeering, and he requests that the Subject Judges show cause as to why they should not be prosecuted or sanctioned. In the eighth supplement, Complainant alleges court clerks engaged in misconduct “at the behest of the Judiciary.”

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 the 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 claims that the Subject Judges engaged in 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**.



Chief Judge