

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

11-19-90018

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

JAN 17 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

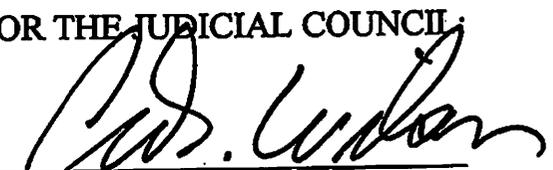
Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, MERRYDAY, THRASH, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Martin, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 5 September 2019, and of the petition for review filed by the complainant on 22 October 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 Chief District Judge L. Scott Coogler did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 05 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90018

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against _____, U.S. District 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 District 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”).

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 Complainant filed in state court a lawsuit against _____, and in August 2018 the defendant removed the case to federal court and filed a motion to dismiss. The Subject Judge issued an order directing Complainant to show cause why the motion to dismiss should not be granted, and Complainant filed a response. In October 2018 the Subject Judge granted the defendant’s motion to dismiss, finding that the court lacked subject matter jurisdiction because Complainant had filed the action past the applicable statutory deadline and failed to allege that he had exhausted available administrative remedies. After that, Complainant filed a response to the Subject Judge’s order.

In late October 2018 the Subject Judge issued an order construing Complainant’s response as a motion to reconsider under Fed. R. Civ. P. 59(e) and denying it, finding that he was “attempting to relitigate old matters.” In December 2018 Complainant filed two additional responses, and the Subject Judge construed them as motions to reconsider and denied them. In January 2019 Complainant filed another response. The next month, the Subject Judge entered an order finding the response again attempted to relitigate old matters and “further demonstrates that [Complainant] has repeatedly abused this Court’s

process.” The order directed that the response be stricken and advised Complainant that no further filings in the closed case would be considered by the court.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that his case was “handled incorrectly,” and he generally takes issue with the Subject Judge’s orders entered in the case. Complainant questions how his case could be dismissed for lack of subject matter jurisdiction when he filed a complaint in the district court and the court had jurisdiction over “disability claims contained in [the] complaint.” He asserts that the Subject Judge failed to explain why the case was “wrongfully dismissed” for lack of jurisdiction.

Complainant takes issue with the Subject Judge’s findings that his responses attempted to relitigate old matters, and he states it was “suspicious” that his last response was stricken when he was asking the Subject Judge to explain why the case was wrongfully dismissed. Complainant also states that: (1) he was told it was the Subject Judge’s responsibility to get “time information” from the defendant but he failed to do so; and (2) the Subject Judge claimed he did not receive a response Complainant submitted in November 2018, even though a receipt proved it was received. He attached various documents to his Complaint.

Supplement

In his supplemental statement, Complainant generally describes problems with his health and requests a response.

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, rulings, and orders in the case, 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 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