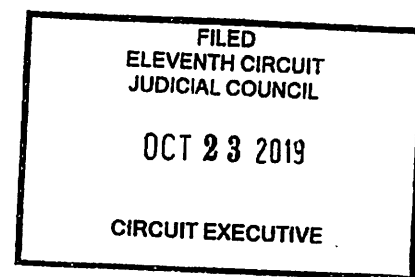


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90027



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

ON PETITION FOR REVIEW*

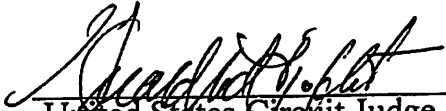
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 14 August 2019, and of the petition for review filed by the complainant on 29 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**.

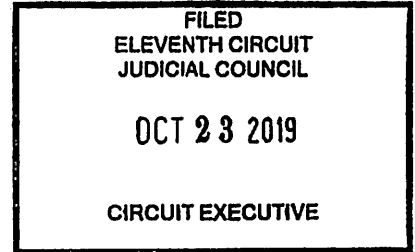
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

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

11-19-90028



**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 14 August 2019, and of the petition for review filed by the complainant on 29 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 did not take part in the review of this petition.

AUG 14 2019

David J. Smith
Clerk

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-19-90027 and 11-19-90028

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former United States Magistrate Judge _____ and United States District Judge _____ of the United States 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 former United States Magistrate Judge _____ and United States District Judge _____ (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”). Judge _____ retired as a magistrate judge as of _____.

Background

The record shows that in February 2018 Complainant filed in the United States District Court for the _____ District of _____ a petition for writ of habeas corpus challenging certain state court proceedings, and he stated that the petition was filed pursuant to 28 U.S.C. § 2241. The next month, a district judge ordered that the case be transferred to the United States District Court for the _____ District of _____ because that was where Complainant was convicted and where the records pertaining to his convictions were located.

In April 2018 Judge _____ issued a report taking judicial notice of certain state court judicial records, finding that the habeas petition was a successive § 2254 petition, and recommending that it be dismissed for lack of jurisdiction as an unauthorized successive petition. Over Complainant’s objections, Judge _____ adopted the report and recommendation and denied the § 2254 petition. Complainant then filed multiple motions and petitions seeking various types of relief, which Judge _____ denied. Complainant appealed, and in February 2019 the appeal was clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that it is reasonable to infer that during his case a “presumption of judicial bias arose” due to the Subject Judges’ “disqualifying interest in the case and/or outcome of the same.” Complainant complains that Judge _____ construed the § 2241 petition as a § 2254 petition and “personally went on-line” to obtain docket entries and make them part of the record. He states that Judge _____ adopted Judge _____ report and recommendation “which resulted in bias because she failed to accord de novo review by failing to address the underlying claim” in the petition. Complainant asserts that it appears Judge _____ “turned a blind eye to the high misdemeanor of [Judge _____] violation of” 28 U.S.C. § 454 (Practice of law by justices and judges) “where he plainly abandoned ‘neutrality’ to render service peculiar to the profession”

Complainant contends that it is reasonable to infer that Judge _____ “failure to address or correct such grave error amounts to misprision of treason” under 18 U.S.C. §§ 4 (Misprision of felony) and 2384 (Seditious conspiracy) and/or the United States Constitution. He asserts the Subject Judges have “plainly and clearly” violated 28 U.S.C. §§ 453 (Oaths of justices and judges), 454, and multiple sections of 455 (Disqualification of justice, judge, or magistrate judge). He argues that Judge _____ “knew or should have known” that Judge _____: (1) “had no right to decline the exercise of jurisdiction . . . than to usurp that jurisdiction under [§] 2254 which was not given which inherently resulted in treason to the Constitution”; and (2) committed a high misdemeanor that was “prejudicial at the inception.” Finally, he alleges that the Subject Judges engaged in misconduct “by failure to discharge all the duties of office by reason of bias or mental disability.”

Discussion

Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.” With respect to that rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding,’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge _____, in light of his retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For that reason, pursuant to Chapter 16 of Title 28 U.S.C.

§ 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant's allegations against Judge _____.

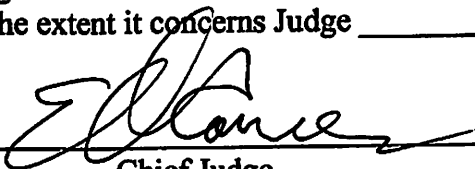
Judge _____

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 Judge _____ official actions, findings, and orders in the case, the allegations are directly related to the merits of Judge _____ 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 Judge _____ was biased, committed a crime, suffered from a disability, or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judge _____, 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** to the extent it concerns Judge _____.



Chief Judge