

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

11-19-90032

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

NOV 4 2019

CIRCUIT EXECUTIVE

**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 5 September 2019, and of the petition for review filed by the complainant on 13 September 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.

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. 11-19-90032

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against 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 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 in August 2018 Complainant filed a civil rights action against multiple defendants and an “Affidavit of financial Statement,” which was docketed as a motion for leave to proceed in forma pauperis (IFP). A magistrate judge issued an order denying the IFP motion, finding that the affidavit did not enable the court to rule on the motion and directing Complainant to complete the appropriate IFP form. After that, Complainant filed, among other things, a “Writ for Default Judgment,” and the Subject Judge entered a paperless order denying the motion as premature.

In September 2018 the magistrate judge issued a report recommending that the case be dismissed without prejudice due to Complainant’s failure to comply with the order requiring him to complete the IFP form. Complainant then filed an “Affidavit of Truth,” a “Writ of Error [sic] Coram Nobis,” a “Writ of Reversal to Vacate Frivolous Order,” and a “Writ Amending the Record to General Jurisdiction,” in which he took issue with various matters.

Later in September 2018, the Subject Judge issued an order adopting the report and recommendation, dismissing the case without prejudice, and denying all pending motions. The order stated that Complainant had filed no objections to the report, and instead filed several motions directed at the court's previous order denying his motion for a default judgment and a writ that was "nonsensical" and failed to object to the report. After that, Complainant filed additional documents in the district court. Complainant also filed notices of appeal in the case, and this Court clerically dismissed the appeals for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "act[ed] as a third party unsolicited Power of attorney for" the defendants and deprived him of his rights under 18 U.S.C. §§ 241 ("Conspiracy against rights") and 242 ("Deprivation of rights under color of law"). He asserts that the Subject Judge's paperless order "has no standing in law and is void." He alleges that the Subject Judge "failed to remain fair and impartial by attempting to act as private individual practicing law from the bench," and "use[d] a[n] unbonded summary Judgment ruling to obstruct" his "affidavit, with no regards to her oath." He contends that the Subject Judge is incompetent, biased, and disabled, and that she committed treason. He attached an "Affidavit of financial Statement" to his Complaint.

Supplement

In Complainant's supplemental statement, he complains that the Subject Judge did not properly address his objections to the report and recommendation, and he reiterates his allegations that the Subject Judge failed to uphold her oath, was incompetent, was disabled, and "practic[ed] law from the bench." He also asserts the Subject Judge failed to file documents, practiced law as a "foreign agent," committed fraud, acted in the absence of jurisdiction, and denied him access to the court. He attached documents to his supplement.

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 with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge committed a crime, was biased or impartial, was incompetent or disabled, 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