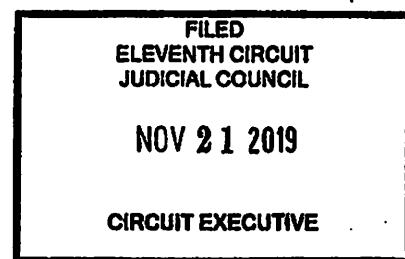


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90037



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

ON PETITION FOR REVIEW*

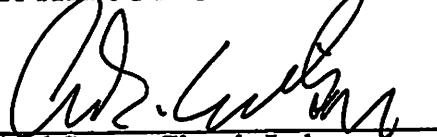
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Rosenbaum, Land, and Walker, the order of Acting Chief Judge Gerald Bard Tjoflat, filed on 7 August 2019, and of the petition for review filed by the complainant on 11 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**.

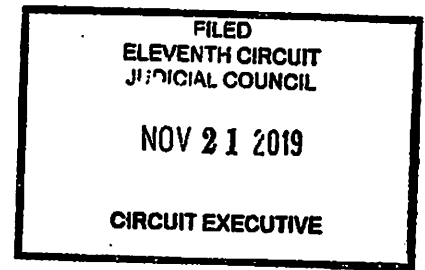
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

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

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

11-19-90038



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

ON PETITION FOR REVIEW*

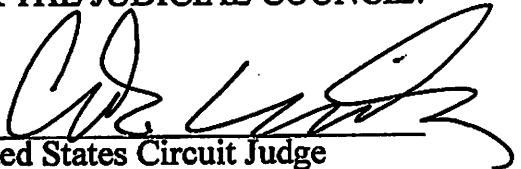
Before: MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Rosenbaum, Land, and Walker, the order of Acting Chief Judge Gerald Bard Tjoflat, filed on 7 August 2019, and of the petition for review filed by the complainant on 11 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 and Circuit Judge Gerald Bard Tjoflat did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 07 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90037 and 11-19-90038

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judges
_____ and _____ 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 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”).

Background

The record shows that in June 2011 a personal representative of an estate filed a counseled civil action against multiple defendants raising excessive force claims. The case initially was assigned to a district judge who is not one of the Subject Judges. In October 2011 the plaintiff filed a second amended complaint, and a couple of months later, the case was reassigned to another district judge who is not one of the Subject Judges. In May 2012 Complainant entered a notice of appearance as co-counsel for the plaintiff.

After various proceedings, in January 2015 a judgment was entered in favor of the defendants. After that, the defendants filed, among other things, a motion to reopen the case and motions seeking sanctions against the plaintiff and her counsel. On January 20, 2015, the district judge entered an order denying the motion to reopen, but allowing the parties to file post-judgment motions or to renew previously filed motions related to sanctions or attorneys’ fees. The next day, the case was reassigned to Judge _____ as the presiding district judge.

The parties then filed multiple motions seeking various types of relief, and the plaintiff filed responses in opposition to the motions for sanctions as well as an amended motion to vacate the judgment. In February 2015 the defendants filed a motion for leave to file a limited reply to the plaintiff’s response, and Judge _____ granted the motion

the next day. In May 2015 Judge _____ entered an order denying the plaintiff's amended motion to vacate the judgment, and the plaintiff later filed a notice of appeal. This Court ultimately dismissed the appeal for lack of jurisdiction.

In September 2017 Judge _____ held a hearing on multiple motions for attorneys' fees and sanctions. In January 2018 he entered an order that, among other things, directed Complainant to pay sanctions, directed the defendants to submit information regarding attorneys' fees to be awarded, and referred Complainant to the state bar in light of his misconduct in the case. On January 19, 2018, the defendants filed a motion for an extension of time to file a motion to quantify their attorneys' fees, and on January 23, 2018, Judge _____ granted the motion.

In February 2018 the plaintiff filed a motion for reconsideration of the Court's January 2018 order in which the plaintiff argued in part that she was denied due process because: (1) some of the reasons the court relied upon in granting the motions for sanctions were raised by the court, not the parties; and (2) the court granted two motions filed by the defendant without giving the plaintiff and her counsel an opportunity to respond, which also suggested that Judge _____ was not impartial. In April 2018 a letter Complainant had sent to the Clerk of the district court was docketed as a motion to disqualify. In the letter, Complainant sought various "e-mails, correspondence, and records" concerning the assignment of the case to Judge _____ and other matters, stating such material was necessary to determine whether the case had been erroneously reassigned to Judge _____.

In August 2018 Judge _____ entered an order that, among other things, denied the plaintiff's motion for reconsideration and motion to disqualify. The order stated that the plaintiff's argument—that she was denied due process because the court imposed sanctions for reasons not raised by opposing counsel—was "without merit" and "nonsensical," noting the court was "allowed to review and rely upon record documents in reaching its conclusions." Judge _____ also found that the plaintiff "fail[ed] to cite any legal authority indicating that the Court acted improperly when it granted Defendants' motions without first hearing from Plaintiff." The order also construed Complainant's letter to the Clerk as a motion to disqualify in light of his apparent concern that the case was erroneously reassigned to Judge _____. Judge _____ then denied the motion to disqualify, finding Complainant had not shown Judge _____ was improperly assigned to the case or established any other basis for disqualification.

The record also shows that in March 2019 Complainant filed in this Court a petition for writ of mandamus, seeking an order directing the district court clerk to provide him various documents so he could determine whether the case was "erroneously reassigned" to Judge _____. Later that month, this Court denied the petition because Complainant had not shown that the right to such relief was clear and

indisputable. Complainant filed a petition for rehearing en banc, which this Court construed as a motion for reconsideration and denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that the case was “erroneously reassigned” to Judge _____, and that the “reassignment occurred in a manner inconsistent with” 28 U.S.C. § 137 (“Division of business among district judges”) a local rule, and “federal case law.” He asserts that Judge _____ violated multiple canons of the Code of Conduct for United States Judges. Specifically, he alleges Judge _____ violated Canon 1 “by exercising jurisdiction over” the case when he knew the case had been “reassigned inconsistently” the law and a local rule, as shown by his reassignment of other cases in a manner consistent with those sources.

Complainant alleges Judge _____ violated Canons 2A and 3A(4): (1) by granting motions filed by the defendants without giving the plaintiff and her counsel an opportunity to respond, in violation of a local rule; (2) and “by raising arguments that were not raised in the defendants’ motions that favored the defendants *and* granting said motions based on said arguments” without giving the plaintiff and her counsel an opportunity to respond. (Emphasis in original). Next, Complainant alleges Judge _____ violated Canon 2A by concluding the plaintiff failed to cite any legal authority indicating that the court acted improperly in granting the defendants’ motions without first hearing from the plaintiff, noting that the plaintiff argued she had been denied due process. Complainant also alleges Judge _____ violated Canon 2A by interpreting correspondence from a law firm to the Clerk’s Office as a motion to disqualify.

Complainant then asserts that the Clerk’s Office represented that the case was reassigned to Judge _____ “pursuant to an e-mail from Judge _____ after stating there was a standing order but later retracting the statement after [he] requested a copy of said standing order.” Complainant asserts that, if Judge _____ directed the Clerk’s Office to reassign the case via email, she violated Canons 3A(1)-(2), (4): (1) by directing the Clerk’s Office “to reassign the case in a manner inconsistent with the Local Rules, the federal rule and case law”; and (2) by failing to take “appropriate action upon learning that the reassignment occurred in a manner inconsistent with the Local Rules, the federal rule and case law.” Complainant attached various documents to his Complaint.

Discussion

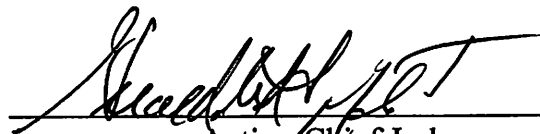
Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not

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 Judges’ official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges caused the case to be improperly reassigned, violated the Code of Conduct for United States Judges, 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