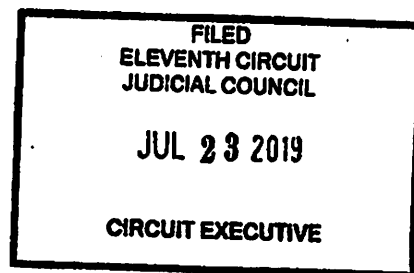


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90053



**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 6 May 2019, and of the petition for review filed by the complainant on 17 June 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**.

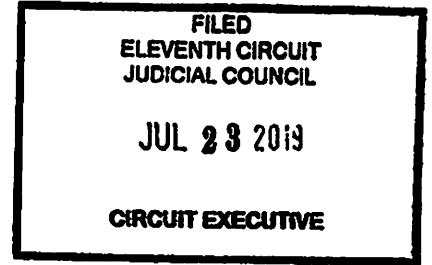
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

- * Chief Circuit Judge Ed Carnes did not take part in the review of this petition.
- ** Judge Emily Marks is Acting Chief Judge.

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

11-19-90054



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MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

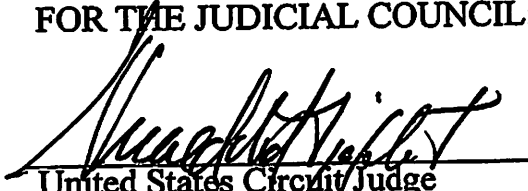
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS,** Chief District Judges.

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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.
- ** Judge Emily Marks is Acting Chief Judge.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90053 and 11-19-90054

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against Chief Judge _____, U.S. Circuit Judge for the _____ Circuit, and _____, former U.S. Circuit Judge for the _____ Circuit, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

ORDER

_____ has filed this Complaint of Judicial Misconduct or Disability against _____ and _____, who is a former United States Circuit Judge for the _____ Circuit (the two Subject Judges). It was filed pursuant to Title 28, Chapter 16, § 351(a) of the U.S. Code and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (JCDR).

Background

_____ filed this Complaint with the Judicial Council of the _____ Circuit. At the time it was filed, _____ was no longer a Judge of the _____ Circuit, having already been confirmed to the _____ Court. In addition to the two Subject Judges, _____ also complains generally about “their peers and colleagues in _____,” although he does not specifically name any of them. He alleges that all of them “dismissed 100% of the 478 complaints about them, and denied 100% of the petitions for review of such dismissals, filed during at least the 1oct06-30nov17 11-year period.”

The Judicial Council of the _____ Circuit issued an order on February 21, 2019, referring the matter involving the Complaint “to the Chief Justice to consider transferring it to another circuit’s judicial council pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.” See JCDR 26 (“In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit.”). The Chief Justice transferred the proceeding to the Judicial Council of the _____ Circuit for it “to exercise the powers of a judicial council with respect to the identified complaint and any pending or new complaints relating to the same subject matter.”

The commentary to Rule 26 provides that “[u]pon receipt of a transferred proceeding, the transferee judicial council shall determine the proper stage at which to begin consideration of the complaint — for example, reference to the transferee chief judge, appointment of a special committee, etc.” JCDR 26 cmt. After the _____ Circuit Judicial Council received _____ transferred proceeding, it determined that the proper stage to begin consideration of the Complaint was before the chief judge of the circuit, and the Council referred it to me. See id.

Complaint

_____ central allegation is that the Subject Judges “and their peers and colleagues in _____” dismissed all of the judicial misconduct or disability complaints filed against them, a total of 478, and denied all of the petitions for review of those dismissals during an eleven-year period ending in November of 2017. Those facts, he asserts, are “established by the statistics that they were required under 28 U.S.C. § 604(h)(2) to submit and did submit to Congress and the public.” (Footnote and citations omitted). He contends that in acting as they did the Subject Judges and their peers and colleagues “arrogated to themselves the power to abrogate in effect” 28 U.S.C. §351, and “abused the self-disciplining power entrusted to them under the [Judicial Conduct and Disability] Act by exonerating themselves from all complaints so as to evade any disciplinary action, thereby resolving in their favor the conflict of interests arising from being the target and the judges of the complaints.”

_____ also alleges that the Subject Judges and their peers and colleagues breached their oaths of office, administered “unequal protection *from* the law,” and were “100% partial toward their peers, colleagues, and friends when they became the target of complaints, all of which they dismissed.” He complains that the Subject Judges and their peers and colleagues violated Canon 1 of the Code of Conduct for United States Judges and, more specifically, that their decisions have depended “upon whether the person whose conduct they are judging is their peer, colleague, or friend” because they rely on them “for cover-up of their misconduct and disability.” He alleges that the Subject Judges and their peers and colleagues have thereby “prejudiced through interdependent partiality ‘the integrity of the judiciary.’” He claims that the conduct of the Subject Judges and their peers and colleagues violates Article III, Section 1 of the Constitution, their oaths of office, and the commentary to Canon 1 that requires them to comply with the law. He also charges a violation of Canon 2 based on his argument that “it is ‘beyond reasonable doubt’ impossible for all the judges to independently deem that 100% of the 478 complaints about them filed over 11 years were properly dismissible but for a complicit reciprocal complaint dismissal agreement.”

As a result, _____ says, the Subject Judges and their peers and colleagues have “denied complainants the benefit intended for them under the Act” and have

“deprived complainants and the rest of the public of the working mechanism” of the Act’s protection from judges’ alleged misconduct and disability. He asserts that they “showed reckless disregard for 100% of the nature, extent, frequency, and gravity of the misconduct and disability complained about in the 478 complaints” and “systematic[ally]” failed to appoint special committees to investigate the complaints. He contends that they have shown “reckless indifference” to complainants and the public “by leaving them exposed to 100% of the prejudice caused by the misconduct and disability complained about,” “additional prejudice at the hands of the exonerated judges, who were left free of any deterrent to further committing misconduct and indulging in disability,” and “additional prejudice . . . at the hands of other judges who, realizing that misconduct and disability had no adverse consequences for judges, committed misconduct and indulged in disability.”

_____ claims there have been violations of Canon 3, pointing to the “number of extra-judicial activities highlighted on [the Subject Judges’ and their peers’ and colleagues’] individual page[s] on the _____ website,” which he alleges show that a “lack of time accounts for 93% of appeals being disposed of through the clerk-filled out, reasonless, arbitrary, fiat-like dumping forms of summary orders.” (Citations omitted). He goes on to theorize that:

By dismissing 100% of the complaints and denying 100% of review petitions, the judges rendered their misconduct and disability riskless, which enabled their further prejudicial misconduct and disability. Worse yet, they emboldened themselves and others to commit misconduct and indulge in disability of ever more diverse nature, to a greater extent, more frequently, and of higher gravity. While dismissing and denying for over a decade, they saw their foreseeable prejudice become a fact, whose continued occurrence they intended.

Finally, _____ asserts that the Subject Judges and their peers and colleagues “deceived potential and actual complainants by pretending that their complaints would be fairly and impartially processed although the judges intended to dismiss 100% of them,” making the Act’s complaint mechanism “a sham that works fraud.”

_____ requests various forms of “action,” including the following: make public his Complaint and the process of considering it; make public judges’ “answers” to his Complaint and afford him an opportunity to reply; make public the 478 complaints, dismissal orders, review petitions, and denials complained about and transfer them to be considered by special committees outside the _____ Circuit comprised of non-judges and non-lawyers; hold fact-finding public hearings and let “independent fact-finders, i.e., news anchors and editors, investigative reporters, and journalism professors” conduct the hearings to determine if the judiciary, through its dismissal of complaints, has an “institutionalized policy of misconduct as its modus operandi”; and also have

“independent IT, mail, and phone forensic experts investigate the Judiciary’s interception of its critics’ communications” and make the findings public. The Complaint goes on to cite links to a website.

After _____ submitted his Complaint, he received a letter from the _____ for the United States Courts of the _____ Circuit, informing him that if he wanted his allegations to be considered as a complaint under Rule 6, he would need to provide the required verification. The letter also stated that because _____ is no longer a judge of the _____ Circuit, no action can be taken under the rules regarding _____ allegations against him.

In response to that letter, _____ provided verification for his Complaint, declaring that the statements he had made in it were true and correct to the best of his knowledge. He also made additional allegations in his response to the _____ letter. _____ response will be permitted and treated as a supplement to his Complaint. See _____ Cir. JCDR 6.7.

In his response, _____ emphasizes that he is complaining not just about Chief Judge _____ but also about then-Judge _____ “and their peers and colleagues.” He also complains about the Catholic Church and certain actions it allegedly took involving priests. He complains about “institutionally coordinated exoneration.” _____ contends that not allowing his Complaint to proceed against _____ would limit the time for filing a complaint and thereby violate the Judicial Conduct and Disability Act. He reiterates that _____ engaged in the alleged dismissal of complaints and denial of review petitions while he was a judge on the U.S. Court of Appeals for the _____ Circuit.

_____ states that he intentionally refrained from naming the judges who are the Subject Judges’ “peers and colleagues,” but he insists that he is complaining about all of them and that a special committee should be able to identify them after an independent investigation. He claims that those peers and colleagues of the Subject Judges “have entered a complicit reciprocal complaint dismissal agreement,” which enables them to “evade discipline, make themselves unaccountable, and go on risklessly committing misconduct and indulging in disability.”

_____ also sent to the _____ of this circuit a letter dated April 20, 2019. To the extent that the letter makes additional allegations about the conduct of the judges of the _____ Circuit, the filing of it is permitted, and the letter will be treated as a second supplement to his Complaint. See _____ Cir. JCDR 6.7. In his letter, _____ contends that he is not required to name the Subject Judges about whom he is complaining. Instead, he asserts that _____ Circuit records will show, or a special committee can determine, who served as chief judge and as judicial council members during the time period at issue.

_____ reiterates in his April 20, 2019 letter that he is complaining about _____ and his alleged participation in decisions dismissing complaints or denying petitions for review during the time that he served as judge on the _____ Circuit. He argues that all of the judges who participated in those decisions are liable for breach of contract and that their decisions on judicial complaints should be vacated and reconsidered. He also argues that it does not matter that _____ is now serving on the _____ Court because all of the judges he is complaining about engaged in “bad Behaviour,” which means that they are not really “hold[ing] Office” under Article III. Pointing to complaint statistics, he also complains about the way that judicial conduct and disability complaints are handled in the _____ Circuit and in every other circuit.

_____ reiterates in his April 20, 2019 letter his request for various actions, including the appointment of a special committee assisted by staff with the credentials he specifies, and so forth.

Discussion

Chief judges have four basic options when reviewing a complaint. Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides:

After reviewing a complaint, the chief judge must determine whether it should be:

- (1) dismissed;
- (2) concluded on the ground that voluntary corrective action has been taken;
- (3) concluded because intervening events have made action on the complaint no longer necessary; or
- (4) referred to a special committee.

JCDR 11(a).

The rules neither require nor permit the procedures that _____ requests. The closest thing that is permitted would be referral to a special committee, which “must consist of the chief judge and equal numbers of circuit and district judges.” JCDR 12(a). A special committee investigates a complaint (including, if necessary, by holding fact-finding hearings) and files a report and recommendation with the judicial council. See JCDR 12–14, 17. A special committee is permitted to use the assistance of staff if it deems that necessary. See JCDR 13(c); JCDR 23(b)(10). But a matter involving a misconduct or disability complaint is referred to a special committee only when the chief

judge of the circuit determines that the complaint is not due to be dismissed or concluded without referral. See JCDR 11(a)(4). That is not the case here.

Petitions for review of a chief judge's disposition of a complaint are filed with circuit judicial councils, which have four options when considering them. Rule 19 provides:

After considering a petition for review and the materials before it, the judicial council may:

- (1) affirm the chief judge's disposition by denying the petition;
- (2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
- (3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or
- (4) in exceptional circumstances, take other appropriate action.

JCDR 19(b). _____ criticizes the denial of all the petitions for review by the _____ Circuit's Judicial Council. Of the actions that the judicial councils could have taken instead of affirming the disposition, the authorized one closest to what _____ would prefer is returning the matter to the chief judge with directions to appoint a special committee.

Stripped to their essence, _____ allegations are that during an eleven-year period the Chief Judge of the _____ Circuit Court of Appeals erroneously decided all 478 judicial misconduct and disability complaints that were filed in that circuit, and the judges of that circuit's Judicial Council erroneously decided all of the petitions for review related to those complaints. Because the circuit chief judge has the authority to dismiss or conclude complaints, the allegations of _____ Complaint against Chief Judge _____ may be considered. See 28 U.S.C. § 351; JCDR 11.

The same is not true about _____, who was confirmed as a justice of the _____ Court before _____ filed this Complaint. A complaint cannot proceed against a judge who no longer serves on the court and is not otherwise covered by the Judicial Conduct and Disability Act or the rules implementing the Act. See 28 U.S.C. § 352(b)(2) (stating that a chief judge "may conclude the proceeding if the chief judge finds . . . that action on the complaint is no longer necessary because of intervening events"); JCDR 11(e) (stating that 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"); JCDR 11 cmt. ("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."); see also 28 U.S.C.

§ 351(d)(1) (providing that under the Act “the term ‘judge’ means a circuit judge, district judge, bankruptcy judge, or magistrate judge”); JCDR 1(b) (listing judges covered by the Act and the rules, which do not include Justices of the _____ Court). For this reason, the part of _____ Complaint alleging that then-Judge _____ engaged in any misconduct is **CONCLUDED**.

The conclusion of this part of this proceeding on this basis in no way suggests any wrongdoing by then-Judge _____. And, as we will explain later in this order, there is an independently adequate alternative reason that dictates the dismissal of the Complaint against the Subject Judges, including _____ even if he were still a court of appeals judge.

As for _____ allegations against the “peers and colleagues” of the Subject Judges, and his claims about the denial of petitions for review, the judges who serve as members of the circuit Judicial Council do have the authority to rule on those petitions. See JCDR 19. As a general rule, however, a complaint cannot proceed against unnamed judges based on the vague assertion that they are “peers and colleagues” of a Subject Judge. See generally 28 U.S.C. § 352(a)–(b) (outlining the steps that a chief judge may take in reviewing and resolving a complaint, which require knowledge of the Subject Judge’s identity); JCDR 11(e) & cmt. (explaining that unless remedial action is possible as to a particular judge, a complaint generally cannot proceed). That is a sufficient reason by itself to dismiss the parts of the Complaint against unnamed “peers and colleagues” of the Subject Judges.

Not only that, but the allegations of the Complaint challenge the merits of judicial decisions and are unsupported by any evidence of misconduct or disability, the Complaint is due to be dismissed in its entirety, which is an independently adequate alternative reason for dismissing the Complaint in its entirety. See 28 U.S.C. § 352(b)(1)(A)(ii), (iii); JCDR 11(c)(1)(B), (D).

Rule 4(b)(1), “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.” JCDR 4(b)(1). 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 that are ‘[d]irectly related to the merits of a decision or procedural ruling.’” JCDR 4 cmt.

The commentary to the rule explains:

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. The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation.

Id. (emphasis added); see also JCDR 5 cmt. (“A chief judge’s decision not to identify a complaint under Rule 5 is not appealable and is subject to Rule 4(b)(1), which excludes merits-related complaints from the definition of misconduct.”).

A misconduct complaint based on the number or percentage of dismissals, without more, “is directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and “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). _____ is merely speculating that the complaint review procedure in the _____ Circuit must be flawed because if it were not, the results would be different.

In 2004, Chief Justice William Rehnquist appointed a committee to assess the way that the Judicial Conduct and Disability Act of 1980 was being implemented. See Breyer Committee Report, 239 F.R.D. 116, 119 (2006). The Breyer Committee later issued a report, explaining its task this way: “The basic question presented is whether the judiciary, in implementing the Act, has failed to apply the Act strictly as Congress intended, thereby engaging in institutional favoritism. This question is important not only to Congress and the public, but to the judiciary itself.” Id. To answer that question, the Breyer Committee conducted a careful review of complaints about alleged judicial misconduct and disability. See id. at 120–22; see also JCDR 1 cmt. (discussing the “interpretive standards” developed by the Breyer Committee). The Committee found “no serious problem with the judiciary’s handling of the vast bulk of complaints under the Act.” 239 F.R.D. at 122. In its study of complaints filed during 2001 to 2005, the Committee found that “[a]lmost all complaints are dismissed by the chief judge; 88% of the reasons given for dismissal are that the complaint relates to the merits of a proceeding or is unsubstantiated.” Id. at 123 (emphasis added).

The Breyer Committee Report suggested, among other things, that courts should include an explanation on their websites to help people understand in plain language the rules that govern the consideration of complaints about judicial misconduct or disability. Id. at 218–19. It suggested this explanation: “Almost all complaints in recent years have been dismissed because they do not follow the law about such complaints. The law says that complaints about judges’ decisions and complaints with no evidence to support them must be dismissed.” Id. at 219 (emphasis added). Most circuits, including the

_____ Circuit, have followed the Breyer Committee’s recommendation by including that statement on their websites.¹

The fact that most complaints are properly dismissed is well-known and is publicly posted on courts’ websites. The fact that most complaints challenge judicial decisions and are unsupported by evidence of misconduct or disability is also well-known and is publicly posted on courts’ websites. A bare allegation about the number or percentage of complaints that have been dismissed and petitions for review that have been denied, coupled with nothing more than speculation or conclusory accusations about the correctness of the decision or the complaint review process in general, in no way evidences judicial misconduct or disability. See JCDR 25 cmt. (observing that “multiple-judge complaints are virtually always meritless”).

_____ Complaint not only takes issue with the merits of judicial decisions resulting in the dismissal of complaints and the denial of petitions for review but also with the statutory process itself and the implementing rules that govern the consideration of judicial conduct complaints. See generally 28 U.S.C. §§ 351–364; JCDR 1–29. Following statutes and rules relating to judicial conduct and disability proceedings does not amount to judicial misconduct. The Complaint is devoid of any evidence to support any allegations of misconduct.

In his April 20, 2019 letter, _____ also criticizes the way that judicial conduct and disability complaints are handled in the _____ Circuit and in all other circuits. He contends that the judges of the _____ Circuit Judicial Council have “a disqualifying conflict of interests.” As support for that assertion, he states that 212 pending and new complaints were “handled” in this circuit between October 1, 2017 and September 30, 2018, and no complaints were referred to a special committee or returned to the chief judge upon a petition for review, nor were any judges censured, reprimanded, or had their assignments suspended. He contends that shows the judges of this circuit are “running the Act’s complaint mechanism as a sham that works fraud on *We the People*.” He argues: “No reasonable person informed of the facts and to be informed by _____ from now on can have probable cause to believe that the _____ Circuit Judicial Council will handle his complaint in a way diametrically opposed to its own and its 14 circuits and national courts’ statistical record in order to meet the standard of Commentary on Rule 4 of ‘protecting the fairness and thoroughness of the process by

¹ See, e.g.,

<https://www.cadc.uscourts.gov/internet/home.nsf/Content/Judicial+Misconduct>;
<https://www.ca1.uscourts.gov/judicial-conduct-disability>;
[http://www.ca2.uscourts.gov/judges/judicial conduct.html](http://www.ca2.uscourts.gov/judges/judicial%20conduct.html);
<http://www.ca4.uscourts.gov/rules-and-procedures/judicial-conduct-disability>;
<http://www.ca5.uscourts.gov/rules-procedures/rules/judicial-misconduct-and-disability-rules>;
<http://www.ca7.uscourts.gov/judicial-conduct/judicial-conduct.htm>;
<http://www.ca11.uscourts.gov/judicial-conduct-disability>.

which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved.”

Although he has not filed a separate complaint against any _____ Circuit judge, _____ April 20, 2019 letter does assert that unnamed judges of this circuit have engaged in misconduct by participating in a “complicit reciprocal complaint dismissal agreement,” which, according to _____, is the same kind of scheme that the judges of _____ Circuit (and “the other 14 circuits and national courts subject to the Act”) participate in as evidenced by their statistical records. _____ assertions are essentially a complaint against every chief circuit judge and every circuit judicial council in the country. He is in effect alleging that all judges in all circuits who are involved in any part of the judicial conduct and disability process have been derelict in their duties and implicitly that they are all disqualified from considering any complaints of judicial misconduct or disability.

To the extent _____ criticizes the way that judicial conduct and disability complaints are handled in this circuit, a question arises as to whether, even though he has not filed a complaint against any judge of this Court and has not named any _____ Circuit judges as Subject Judges, he is implicitly complaining about the chief judge of this circuit and all the judges on the circuit judicial council.

As a general rule Subject Judges are disqualified from considering complaints that have been filed against them. See JCDR 25(b). The rule of necessity, however, carves out an exception when a complainant asserts blanket claims against a large group of judges. See JCDR 25 cmt.; see also United States v. Will, 449 U.S. 200, 212–13, 101 S. Ct. 471, 479–80 (1980). As the commentary to the Rule 25 explains:

Sometimes a single complaint is filed against a large group of judges. If the normal disqualification rules are observed in such a case, no court of appeals judge can serve as acting chief judge of the circuit, and the judicial council will be without appellate members. Where the complaint is against all circuit and district judges, under normal rules no member of the judicial council can perform the duties assigned to the council under the statute.

JCDR 25 cmt. That is close enough to the situation here. Based on the numbers of complaints that are dismissed and the petitions for review that are denied, _____ is challenging the merits of judicial decisions and complaining about all the judges who have participated in making those decisions, including the judges who are now in a position to do so.

The rules do authorize a Judicial Council to invoke the rule of necessity in this situation. See id. As the commentary explains:

In recognition that these multiple-judge complaints are virtually always meritless, the judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of a complaint where it would otherwise be impossible for any active circuit judge in the circuit to act, and (2) whether it is necessary, appropriate, and in the interest of sound judicial administration, after appropriate findings as to need and justification are made, to permit subject judges of the judicial council to participate in the disposition of a petition for review where it would otherwise be impossible to obtain a quorum.

Applying a rule of necessity in these situations is consistent with the appearance of justice. See, e.g., In re Complaint of Doe, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of necessity); In re Complaint of Judicial Misconduct, No. 91-80464 (9th Cir. Jud. Council 1992) (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.

Similarly, there is no unfairness in permitting subject judges, in these circumstances, to participate in the review of the chief judge's dismissal of an insubstantial complaint. The remaining option is to assign the matter to another body. Among other alternatives, the judicial council may request a transfer of the petition under Rule 26. Given the administrative inconvenience and delay involved in these alternatives, it is desirable to request a transfer only if the judicial council determines that the petition for review is substantial enough to warrant such action.

Id. The option of transferring the matter to another body is unavailable here because _____ is complaining that every chief circuit judge and all judicial councils are guilty of the dereliction of duty he asserts.

As mentioned before, a complaint generally cannot proceed against unnamed judges. See generally 28 U.S.C. § 352(a)–(b); JCDR 11(e) & cmt. Even so, to the extent that _____ is complaining about the chief judge of this circuit and the other judges on the _____ Circuit Court of Appeals, the _____ Circuit Judicial Council has considered _____ April 20, 2019 letter in order to determine “whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of [the] complaint where it would otherwise be impossible for any active circuit judge in the circuit to act.” JCDR 25 cmt. The Council determined that it is.

To the extent that _____ is also complaining about the judges who serve on the _____ Circuit Judicial Council, the Council has also determined that the

insubstantial allegations of the Complaint do not warrant a transfer to another circuit under Rule 26, especially given that the Complaint asserts that statistics show that all circuits are complicit in the conduct that _____ complains about. If _____ Complaint is to be considered, some circuit must consider it, and the rule of necessity and the Chief Justice's transfer decision dictate that this circuit should do so.

In light of the Council's rule of necessity determination, I have determined that _____ allegations against the judges of this and every other circuit who are or have been involved in the judicial conduct and disability process do not merit the identification of a complaint against any judge in this circuit or any other circuit. See JCDR 5(a); see also JCDR 3 cmt.

The allegations of _____ Complaint are "directly related to the merits of . . . decision[s] or procedural ruling[s]," 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 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, the Complaint is **DISMISSED**.



Chief Judge