

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

**11-19-90055**

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

FEB 03 2020

CIRCUIT EXECUTIVE

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

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**ON PETITION FOR REVIEW\***

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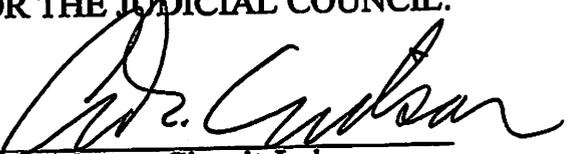
Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Martin, Coogler, and Walker, the order of Chief Judge Ed Carnes, filed on 28 October 2019, and of the petition for review filed by the complainant on 21 November 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 Clay D. Land did not take part in the review of this petition.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-19-90055**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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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.

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**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”).

**Background**

The record shows that in January 2017 Complainant, along with \_\_\_\_\_ and \_\_\_\_\_, filed a lawsuit against multiple defendants, alleging harassment, damages, and pain and suffering related to housing and medical issues. The complaint was signed only by Complainant. Complainant also filed a motion for leave to proceed in forma pauperis (IFP) and a motion to appoint counsel.

In February 2017 the Subject Judge held a status conference attended by Complainant, \_\_\_\_\_, and an attorney for one of the defendants. The Subject Judge initially stated that he did not see \_\_\_\_\_ signature on the complaint, but that it did not matter for purposes of the conference. The Subject Judge explained that he had called the plaintiffs to court to tell them they were “at a tremendous disadvantage in acting without a lawyer.” Complainant stated she believed she would proceed without a lawyer anyway, and the Subject Judge responded, “Well, I think you’re wrong. But the fact that I think that does not make it so.”

The Subject Judge then stated, “I’ve been doing this a long time, and I’ve seen a lot of people in your position, and I don’t ever remember one of them that was successful in pursuing the case without the help of a lawyer. There are just too many strikes against you.” The Subject Judge also stated, “Well, you sound determined to proceed by

yourself. That's okay, I'm telling you. But I'm just -- I want you to understand at the outset that that's a mistake for you, and you are almost certain to lose your case."

After further discussion, Complainant and \_\_\_\_\_ asked about opposing counsel, and the Subject Judge stated that the attorney had asked to be present for their discussion, and the Subject Judge permitted him to do so. Complainant stated that she had a copy of the document showing that \_\_\_\_\_ had signed it, and the Subject Judge responded, "It doesn't matter. We're not going to go through these papers here."

On the same day as the status conference, the plaintiffs filed an amended complaint, signed by Complainant and \_\_\_\_\_, along with supporting documents. About a week later, the Subject Judge sent a letter to Complainant in response to a letter she had written to the court. In the letter, the Subject Judge noted that Complainant was not required to have a lawyer and it was "entirely [her] choice" whether to hire one, but that her "chances of success greatly decrease" if she chose to represent herself. The Subject Judge offered to put the case on hold if Complainant wanted time to consult with an attorney, and he included the contact information for his calendar clerk in case Complainant wanted to request that additional time.

In April 2017 the Subject Judge entered an order requiring the plaintiffs to file: (1) an amended IFP motion that included supporting affidavits from all three plaintiffs; and (2) an amended complaint that provided an adequate basis for the court's jurisdiction and facts sufficient to state a claim on which relief could be granted. The next month, Complainant filed an affidavit in which she generally stated that she had provided the court with documents and evidence. \_\_\_\_\_ also filed an affidavit, and \_\_\_\_\_ filed a letter, both generally asserting the defendants had caused damage to the plaintiffs.

In mid-May 2017 the Subject Judge issued an order dismissing the amended complaint for failure to prosecute, finding that the plaintiffs had failed to comply with the earlier order requiring them to file an amended IFP motion and amended complaint. Complainant appealed and moved to proceed IFP on appeal. In June 2017 the Subject Judge denied the IFP motion, finding that the plaintiffs had not established that they were unable to pay the filing fee or that the appeal was brought in good faith. This Court later affirmed the district court's judgment.

### Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that at the status conference in February 2017, the Subject Judge informed her that "pro se cases do not win in his court" and he "falsified that he did not have a particular document showing that \_\_\_\_\_ had signed." She takes issue with the presence of an opposing party's attorney at the conference, asserting that the attorney was later fired because he "did not receive orders to attend." Complainant states that the Subject Judge "continued

his process with” the attorney’s law firm and “did his own serving to the firm,” and that she “never served” the firm. Finally, Complainant appears to take issue with the processing of her documents and alleges an employee of this Court “tampered with” certain documents. She attached a letter addressed to the Clerk of this Court.

### 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, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge knowingly made a false statement 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**.



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Chief Judge