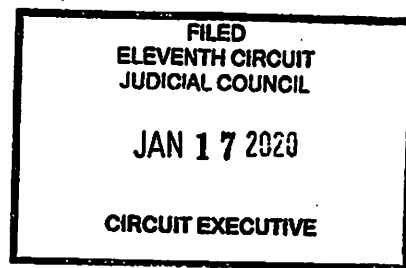


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90058



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

ON PETITION FOR REVIEW*

Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, MERRYDAY, THRASH, COOGLER, 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, Martin, Land, 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 27 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 did not take part in the review of this petition.

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

11-19-90059

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 17 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, MERRYDAY, THRASH, COOGLER, 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, Martin, Land, 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 27 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 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 Nos. 11-19-90058 and 11-19-90059

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against 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 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”).

Background

The record shows that in September 2017 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging a state court conviction, as well as an application for leave to proceed in forma pauperis (IFP). He also filed a “Notice to Challenge,” asserting that a State Attorney General violated the law by not providing the state court with certain transcripts in Complainant’s state habeas proceedings. In October 2017 Judge _____ entered an order granting Complainant’s IFP motion, directing the respondent to show cause why the § 2254 petition and notice should not be granted, and directing the respondent to transmit all available pleadings, transcripts, and decisions needed to determine the issues raised.

A couple of months later, the respondent filed an answer to the § 2254 petition, arguing that all of the grounds for relief were procedurally defaulted. Complainant filed objections to the answer, arguing that the respondent had failed to provide the court with the pleadings, transcripts, and decisions as it had been ordered to do. In May 2018 Complainant filed a “Motion for Clarification and or Ruling on Parties Dispute” in which he sought a ruling on his objections to the respondent’s answer and contended that the respondent had failed to respond to his Notice to Challenge and had failed to provide the court with pleadings, transcripts, and decisions. A few months later, Complainant filed a motion for summary judgment.

In February 2019 Judge _____ issued an order and report in which he: (1) denied Complainant's motion for clarification, stating that the court was satisfied that the respondent had complied with the order to provide all necessary documents; (2) recommended that Complainant's § 2254 petition and motion for summary judgment be denied, finding that all of the grounds for relief were procedurally defaulted; and (3) recommended that a certificate of appealability (COA) be denied. Later that month, Complainant filed objections to the report and recommendation. The next day, Judge _____ issued an order adopting the report and recommendation, overruling Complainant's objections, denying his § 2254 petition and motion for summary judgment, and declining to issue a COA. Complainant appealed, and this Court later granted him a COA on the issue of whether the district court had erred in denying his § 2254 petition based on a determination that all of his claims were procedurally defaulted.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges allowed a State Attorney General to withhold and conceal official transcripts in violation of "constitutional laws, procedural requirements, and their sworn oath of office." He complains that the respondent did not address his Notice to Challenge in its answer to his § 2254 petition and did not provide the complete record. He alleges that Judge _____ engaged in "unconstitutional and clearly bias[ed]" conduct by failing to issue an order "as to the substantial dispute concerning the unlawful hand[ling] of official judicial records" in violation of 18 U.S.C. § 2071, which pertains to concealment, removal, or mutilation of judicial records.

Complainant states that Judge _____ "had a constitutional duty to prevent this unlawful conduct and yet he acted in a manner clearly beneficial to the State Attorney General in direct violation of his oath as well as the mandated constitutional demand, that Judges act in an impartial and neutral manner." Complainant also asserts that the State intentionally and unlawfully withheld transcripts to deny him due process and equal protection of the laws, and that Judge _____ "was complicit in this conduct."

Complainant asserts that Judge _____ "seems to have also been complicit" because he adopted Judge _____ report and recommendation less than 24 hours after Complainant's objections to the report were received. He states that Judge _____ "avoided any such discussions as to [Complainant's] allegations of illegal conduct just as the State Attorney General had been allowed to do by the complicity of" Judge _____. Complainant also states he "can't even rationalize" how a judge could fairly review a case in less than 24 hours.

Complainant alleges that Judge _____ “also violated his oath of office as well as the constitutional mandate to remain neutral and impartial, when he failed to follow” Federal Rule of Civil Procedure 56 in denying Complainant’s motion for summary judgment. He contends Judge _____ failed to discuss the material facts set out in the motion and denied the motion even though the facts were undisputed.

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, findings, report, recommendations, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ 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 Judges were biased against him or in favor of others, were not impartial, violated their oaths of office, 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