

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

FEB 11 2020

CIRCUIT EXECUTIVE

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

**11-19-90081**

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

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ON PETITION FOR REVIEW\*

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Before: JORDÁN, NEWSOM, BRANCH, and GRANT, Circuit Judges;  
MERRYDAY, MOORE, THRASH, LAND, COOGLER, DuBOSE, HALL,  
WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Newsom, Branch, Grant, Land, and Walker, the order of Acting Chief Judge William H. Pryor Jr., filed on 25 October 2019, and of the petition for review filed by the complainant on 2 December 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 Judges Charles R. Wilson, William H. Pryor Jr., Beverly B. Martin, Robin S. Rosenbaum, and Jill Pryor did not take part in the review of this petition.

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

11-19-90082

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

FEB 11 2020

CIRCUIT EXECUTIVE

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

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ON PETITION FOR REVIEW\*

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Before: JORDÁN, NEWSOM, BRANCH, and GRANT, Circuit Judges;  
MERRYDAY, MOORE, THRASH, LAND, COOGLER, DuBOSE, HALL,  
WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Newsom, Branch, Grant, Land, and Walker, the order of Acting Chief Judge William H. Pryor Jr., filed on 25 October 2019, and of the petition for review filed by the complainant on 2 December 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 Judges Charles R. Wilson, William H. Pryor Jr., Beverly B. Martin, Robin S. Rosenbaum, and Jill Pryor did not take part in the review of this petition.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 25 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-19-90081 and 11-19-90082**

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

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IN RE: The Complaint of \_\_\_\_\_ against United States Circuit Judges  
\_\_\_\_\_ and \_\_\_\_\_ of the United States Court of Appeals for the  
\_\_\_\_\_ Circuit, 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 Circuit 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 October 2017 Complainant filed a prisoner civil rights action against multiple defendants, generally alleging the defendants violated his right of access to the courts and asserting he was in danger at his place of confinement. The complaint included a motion for leave to proceed in forma pauperis (IFP). That same month, a magistrate judge issued a report recommending that Complainant’s IFP motion be denied and his complaint be dismissed pursuant to the “three strikes” provision of 28 U.S.C. § 1915(g), finding in part that he did not establish he was in imminent danger of serious physical injury at the time he filed the action.

Complainant then filed a motion in which he asserted he was not being given access to legal materials, and the magistrate judge denied the motion. Complainant filed a “Conditional Notice of Appeal,” and the district judge entered an order treating the filing as an objection and overruling and denying it. Complainant then filed a notice of appeal, and this Court later dismissed the appeal for lack of jurisdiction.

After various proceedings, in February 2018 the district judge entered an order adopting the magistrate judge’s report and recommendation, denying Complainant’s IFP motion, and dismissing the case without prejudice due to his failure to pay the filing and administrative fees. The next month, Complainant filed a motion to vacate the court’s orders, which the district judge denied. Complainant also filed a notice of appeal, and

this Court later clerically dismissed the appeal for want of prosecution. After additional proceedings, Complainant filed multiple motions seeking various types of relief, which the district judge denied. In February 2019 he filed a notice of appeal seeking to appeal orders denying a motion to amend his complaint, a motion to vacate the judgment, and a motion to reconsider and reverse orders.

Complainant then filed in this Court a motion for leave to appeal IFP, arguing he was in imminent danger of serious physical injury at the time he filed his complaint and thereafter. In May 2019 Judge \_\_\_\_\_ entered an order denying the IFP motion, finding Complainant had three strikes under § 1915 and was not currently under imminent danger of serious physical injury. Complainant filed a motion for reconsideration, and in July 2019 a two-judge panel that included Judge \_\_\_\_\_ denied the motion because Complainant offered no new evidence or arguments of merit to warrant relief. This Court then clerically dismissed the appeal for want of prosecution because Complainant failed to pay the filing and docketing fees. After that, Complainant filed a motion to recall the mandate and reinstate the appeal, and in September 2019 a two-judge panel that did not include either of the Subject Judges denied the motion and directed the clerk to accept no further filings from Complainant in the appeal.

Complainant filed another notice of appeal in the case, and this Court initially clerically dismissed the appeal for want of prosecution. After that, certain documents Complainant submitted were returned unfiled because the case was closed. In June 2019 he filed a motion to reinstate the appeal, and the next month the appeal was clerically reinstated.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that Judge \_\_\_\_\_ in his May 2019 order “made three gross errors that an honest, and impartial judge would never have made” and that the errors were “knowing, intentional and maliciously prejudicial.” Complainant specifically takes issue with Judge \_\_\_\_\_ statement that Complainant was not currently under imminent danger of serious physical injury, contending Judge \_\_\_\_\_ could not possibly have the personal knowledge to reach that conclusion, and that if the conclusion is based on hearsay, he engaged in “illegal, corrupt and unethical ex parte communication.”

Next, Complainant asserts Judge \_\_\_\_\_ “intentionally, arbitrarily and maliciously eschewed” the evidence showing that he was in imminent danger at the time he filed his complaint and thereafter. Complainant also states that Judge \_\_\_\_\_ knows the “temporal criterion” for determining imminent danger is the time the complaint is filed. He asserts Judge \_\_\_\_\_ made his rulings “with the express anti-prisoner intent and purpose to obstruct and deny [Complainant] his constitutional right to” access the courts.

Complainant then takes issue with the clerical dismissal of one of his appeals. He states he sent Judge \_\_\_\_\_ letters requesting that he direct the Clerk's Office to file certain motions that had not been filed, but that he received no response to those letters. Complainant alleges that Judge \_\_\_\_\_ "join[ed] his brethren in the corruption cabal" that is obstructing his access to the federal courts.

### 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 Judge \_\_\_\_\_ official actions, findings, and orders in Complainant's appeal, the allegations are directly related to the merits of Judge \_\_\_\_\_ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that Judge \_\_\_\_\_ engaged in improper *ex parte* communications or that the Subject Judges acted with an illicit or improper motive 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**.

/s/ William H. Pryor Jr.

Acting Chief Judge