

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

11-19-90083

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JUN 02 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

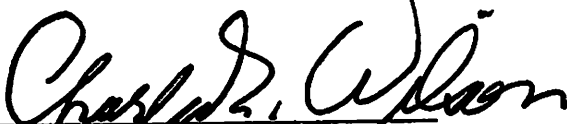
Before: WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MERRYDAY, MOORE, THRASH, LAND, COOGLER, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, William Pryor, Martin, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 22 January 2020, and of the petition for review filed by the complainant on 20 March 2020, 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.

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 22 2020

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90083

IN THE MATTER OF A COMPLAINT FILED BY _____

**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.**

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 December 2012 Complainant filed a lawsuit against a bank and a mortgage company, alleging that the company had overcharged him when he signed his loan and then engaged in fraud and age discrimination by requiring insurance on the loan, informing him that his taxes were delinquent, and transferring the loan to another company. He also moved for leave to proceed in forma pauperis (IFP). A magistrate judge granted the IFP motion and directed him to file an amended complaint.

In January 2013 Complainant filed an amended complaint, which the bank moved to dismiss. The Subject Judge granted the motion to dismiss and directed Complainant to file a second amended complaint.

In April 2013 Complainant filed a motion for recusal of the Subject Judge, asserting that the orders to amend were harassment and that the Subject Judge was biased and unprofessional. The Subject Judge denied the motion, determining that a reasonable observer would not have questioned his impartiality in the case. Complainant filed a second amended complaint, which the defendants moved to dismiss. The Subject Judge granted the motions to dismiss and dismissed the case for lack of subject matter jurisdiction. Complainant appealed, and this Court affirmed.

In August 2016 Complainant filed a second lawsuit against the bank and the state, alleging that the bank had filed a frivolous foreclosure suit against him and picked a

biased state court judge to preside over the case. He also filed an IFP motion. A magistrate judge directed Complainant to file an amended complaint that complied with the court's rules. The magistrate judge then issued an order to show cause based upon Complainant's failure to file an amended complaint. When Complainant again failed to respond, the magistrate judge recommended that the IFP motion be denied and the case be dismissed for failure to comply with court orders and failure to prosecute. The Subject Judge adopted the recommendation and dismissed the case.

In October 2016 Complainant moved to reopen the case, and in November 2016 he filed an amended complaint. The magistrate judge's recommendation was to grant the motion to reopen, deny Complainant's IFP motion, and dismiss the amended complaint. The Subject Judge adopted the recommendation over Complainant's objections, noting that the allegations in the amended complaint were still unclear. Complainant appealed, and this Court denied his motion for IFP status on appeal and then clerically dismissed his appeal for failure to pay the filing fees.

In July 2017 Complainant filed a third lawsuit against a county agency, asserting that the agency employees were rude and offensive and had maliciously hired contractors to depreciate his home value by damaging the home. Complainant attached to his complaint a charge of discrimination filed with the Equal Employment Opportunity Commission (EEOC). He also filed an IFP motion. A magistrate judge denied his IFP motion without prejudice and directed him to file an amended complaint and affidavit of indigency. Complainant appealed, and the Subject Judge affirmed, denied his IFP motion, and directed him to file an amended complaint.

In February 2018 Complainant filed an amended complaint. He also moved for recusal of the Subject Judge, asserting that the Subject Judge had been biased in his two cases against the bank. Complainant stated that he had filed an EEOC charge regarding the case and had filed a complaint about the Subject Judge with the U.S. Department of Justice. The Subject Judge denied the recusal motion, determining after reviewing the docket that his impartiality could not be questioned. The Subject Judge dismissed the amended complaint, noting that it contained insufficient information to determine whether the court had jurisdiction over the case or whether the complaint had stated a plausible claim. The Subject Judge directed Complainant to file a second amended complaint.

In July 2018 Complainant filed a second motion for recusal of the Subject Judge, asserting that the Subject Judge had been malicious in all three cases and had made false statements. The Subject Judge denied the second recusal motion.

In August 2018 Complainant filed a second amended complaint. He then filed additional motions, including a request for a hearing. The magistrate judge recommended that the case be dismissed without prejudice because the second amended complaint was a shotgun pleading that failed to state any plausible claims or sufficiently allege the court's subject matter jurisdiction.

In November 2018 Complainant moved for a hearing to introduce more evidence. The Subject Judge denied the request for a hearing, finding that there was no basis for a hearing at that time because the defendants had not yet been served. Over Complainant's objections, the Subject Judge adopted the magistrate judge's recommendation, dismissed the second amended complaint, and directed Complainant to file a third amended complaint.

In December 2018 Complainant filed a third amended complaint. The Subject Judge dismissed it with prejudice, noting that Complainant still had not stated a claim for relief that could be provided by federal courts and additional amendments would be futile. Complainant appealed, and this Court denied his motion for IFP status on appeal and then clerically dismissed his appeal for failure to pay the filing fees.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge failed to recuse himself from Complainant's cases based on a conflict of interest, questioned his evidence, directed him to amend his complaints, and denied him a hearing to present more evidence and a trial. He also raises allegations against a magistrate judge.


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 that Complainant's allegations concern the substance of the Subject Judge's official actions, rulings, findings, and orders in the cases, the allegations are directly related to the merits of the Subject Judge's 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 Judge was biased, had a conflict of interest, 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