

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

**11-19-90100**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**JUN 19 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, MARTIN, ROSENBAUM, JILL PRYOR, 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, Martin, Rosenbaum, Land, and Walker, the order of then-Chief Judge Ed Carnes, filed on 16 March 2020, and of the petition for review filed by the complainant on 3 April 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**.

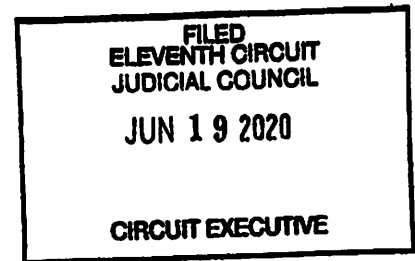
FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

\* Chief Circuit Judge William H. Pryor Jr., and Judges Ed Carnes, Adalberto Jordan, and Kevin C. Newsom did not take part in the review of this petition.

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

**11-19-90101**



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

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**ON PETITION FOR REVIEW\***

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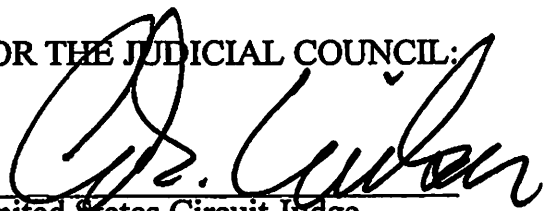
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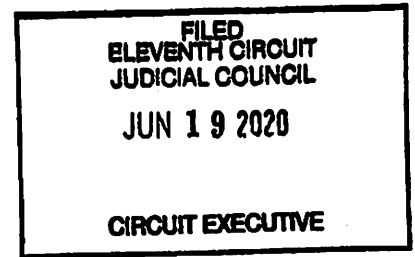
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United States Circuit Judge

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

**11-19-90102**



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

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**ON PETITION FOR REVIEW\***

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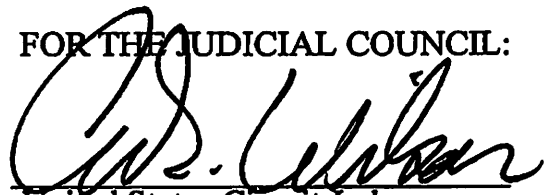
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FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

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

**11-19-90103**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**JUN 19 2020**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW\***

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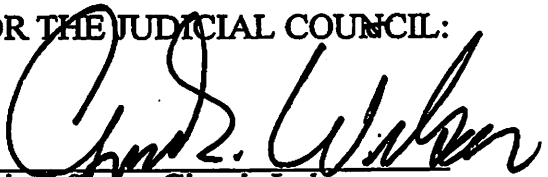
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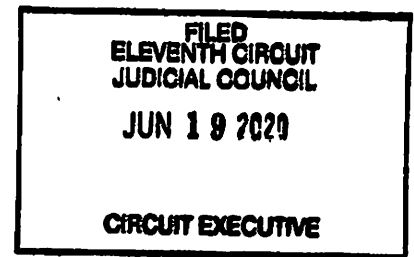
FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

\* Chief Circuit Judge William H. Pryor Jr., and Judges Ed Carnes, Adalberto Jordan, and Kevin C. Newsom did not take part in the review of this petition.

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

**11-19-90104**



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

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**ON PETITION FOR REVIEW\***

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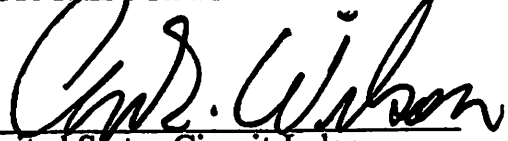
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FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

\* Chief Circuit Judge William H. Pryor Jr., and Judges Ed Carnes, Adalberto Jordan, and Kevin C. Newsom did not take part in the review of this petition.

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 16 2020

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-19-90100 through 11-19-90104**

**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 April 2018 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. He also filed a motion to proceed in forma pauperis (IFP), which a magistrate judge granted. In November 2018 the magistrate judge issued a report recommending that the § 2254 petition be denied, finding that all of Complainant’s claims were procedurally defaulted and the state court had properly determined that the default was not due to ineffective assistance of counsel. In December 2018 the district judge entered an order adopting the report and recommendation, denying Complainant’s § 2254 petition, and denying him a certificate of appealability (COA).

The next day, Complainant’s objections to the magistrate judge’s report and recommendation were received in the district court. Later in December 2018, Complainant submitted a document contending that the order denying his § 2254 was prematurely issued, and the filing was docketed as a motion to reopen the case. The next month, Complainant filed a notice of appeal as to the order denying his § 2254 petition (Appeal No. \_\_\_\_\_). In mid-January 2019 the district judge entered an order granting the motion to reopen and concluding that Complainant had failed to show that the order denying § 2254 relief should be vacated.

In late January 2019 a panel of this Court composed of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ entered an order denying as unnecessary Complainant's application for leave to file a second or successive habeas petition (Appeal No. 19-10127). The order stated that the application was premature because Complainant's appeal from the denial of his original and only § 2254 petition was still pending before this Court.

In February 2019 Complainant filed in the district court a motion to appeal IFP, which the district judge denied. In March 2019, in Appeal No. \_\_\_\_\_, Judge \_\_\_\_\_ issued an order denying Complainant a COA because he failed to show that reasonable jurists would find debatable the merits of an underlying claim or the procedural issue he sought to raise. Complainant filed a motion for reconsideration, and in May 2019 a two-judge panel composed of Judges \_\_\_\_\_ and \_\_\_\_\_ denied the motion because he had offered no new evidence or arguments of merit to warrant relief.

Meanwhile, in March 2019 Complainant filed in the district court a notice of appeal as to the district court's orders granting his motion to reopen and denying him a COA (Appeal No. \_\_\_\_\_), as well as another motion for a COA. This Court sent Complainant a letter in Appeal No. \_\_\_\_\_ stating that this Court would wait for the district court's ruling on a COA.

In April 2019 a panel of this Court composed of Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ issued an order denying another application for leave to file a second or successive habeas petition that Complainant had filed (Appeal No. \_\_\_\_\_). The panel found that Complainant had failed to show that any of the claims he sought to raise relied on a new rule of constitutional law or newly discovered evidence. In June 2019 the district court denied Complainant's second motion for a COA in accordance with its earlier orders. In November 2019 this Court clerically dismissed Appeal No. \_\_\_\_\_ for want of prosecution.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges did "not substantively obtain[] jurisdiction" over his appeals. He takes issue with Judge \_\_\_\_\_ order denying him a COA in Appeal No. \_\_\_\_\_, alleging that the order did "not adhere to the rule of the court on pleading to appeal," "created a disability," and caused this Court to lack jurisdiction. Complainant states that in Appeal Nos. \_\_\_\_\_ and \_\_\_\_\_ the Subject Judges did "not adhere to the substantive or procedural rule to confer jurisdiction to properly move forward with appeals in its court by either active party," noting that the district court had denied him a COA in June 2019. He states that the "judicial disability created a substantial hinderance," which prevented him from being able to file documents.

Complainant complains that Judges \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ in Appeal No. \_\_\_\_\_: (1) denied his application “without first effectively obtaining procedural jurisdiction”; (2) committed misconduct by denying the application under an “unreasonable standard of law”; (3) failed to provide any controlling authority to support the assertion that he had not made the requisite showing that any of his claims relied on a new rule of constitutional law; and (4) failed to apply the law in effect at the time of the decision, which rendered the decision “of no effect or moot.” Complainant alleges that the Subject Judges violated his right to be heard, failed to properly review his filings, refused to reach the merits of his claims in violation of his rights, failed to provide legal authority to justify the limited review of his filings, failed to comply with court rules, and were not impartial. He attached documents to his Complaint.

### 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’ rulings and orders in his cases and appeals in this Court, the allegations are directly related to the merits of the Subject Judges’ 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 the Subject Judges acted with an illicit or improper motive, were not impartial, 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