

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

11-19-90123

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JUL 30 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW

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

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of then-Chief Judge Ed Carnes, filed on 6 May 2020, and of the petition for review filed by the complainant on 18 May 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

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

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

David J. Smith
Clerk

Judicial Complaint No. 11-19-90123

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”).

As an initial matter, after Complainant filed his Complaint, he filed three supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in December 2000 Complainant and another individual filed a lawsuit against attorney _____ and his law firm, raising claims of negligence, breach of fiduciary duty, and breach of contract arising from the defendants’ representation of the plaintiffs in an earlier action they had filed against a different attorney, _____, his firm, and others. In their complaint, the plaintiffs alleged, among other things, that: (1) two individuals defrauded them in connection with the sale of certain real property; (2) _____ represented the plaintiffs in connection with that sale; and (3) _____ made various false statements to a _____ Bar Grievance Committee in June 1994 after the plaintiffs filed a complaint against him with the _____ Bar.

In June 2001 attorney _____ and his law firm objected to a subpoena that had been issued, arguing that the subpoena sought privileged material related to _____ previous representation of _____ in connection with _____ Bar grievance proceedings initiated by the plaintiffs. _____, as a third party witness, later filed a motion for a protective order concerning a subpoena directing him to appear for a deposition.

After various proceedings, in January 2002 the defendants filed a motion for summary judgment. The next month, the plaintiffs, through their attorney, filed a response in opposition to the summary judgment motion. After additional proceedings, in October 2005 the Subject Judge entered an order granting the defendants' motion for summary judgment, finding that the plaintiffs had not shown that the defendants' actions were the proximate cause of a redressable harm. The plaintiffs filed a Fed. R. Civ. P. 59(e) motion for rehearing, arguing in part that the order granting summary judgment contained "numerous factual errors and omissions" and the "true contents of _____ office file" refuted the allegations in his summary judgment motion.

In December 2005 the Subject Judge entered an order denying the Rule 59(e) motion. The Subject Judge acknowledged that the previous order contained "some factual inaccuracies" due to the complicated and convoluted record but found that the plaintiffs had not demonstrated any clear error that would change the decision to grant summary judgment in favor of the defendants. The plaintiffs appealed. After that, they filed two Rule 60(b) motions for relief from judgment, and the Subject Judge entered orders striking one motion for failure to comply with a local rule on length limits and denying the other because it restated arguments that had already been considered. In September 2006 this Court affirmed the grant of summary judgment in favor of the defendants for the reasons set forth in the district court's order.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge colluded with _____ to avoid holding a hearing on false statements in _____ "fraudulent" January 2002 motion for summary judgment. Complainant asserts that the false statements repeated other false statements _____ made under oath in 1994 to a _____ Bar Grievance Committee, which _____ suborned and knew were refuted by the contents of _____ "office file" and certain "correspondence with _____." Complainant asserts that the Subject Judge obstructed justice by not holding a hearing on the alleged false statements.

Complainant alleges that the Subject Judge's October 2005 order granting summary judgment in favor of the defendants and December 2005 order denying the Rule 59(e) motion contained "balderdash, gobbled[y]gook, gibberish, drivel and lies." He asserts that the Subject Judge colluded with _____ "as to the 'wording'" of those "outrageous and incoherent" orders to cover up _____ fraud and misconduct. Complainant also raises various allegations of misconduct by _____, _____, _____, and others. He attached various documents to his Complaint.

Supplements

In Complainant's first supplemental statement, he alleges that the Subject Judge engaged in "judicial misconduct to cover up" crimes and misconduct by _____,

_____, and _____. Complainant asserts that the Subject Judge colluded with _____ and the plaintiffs' attorney to avoid holding a hearing on the false statements in the January 2002 motion for summary judgment. Complainant also contends that the Subject Judge's statements in his October and December 2005 orders were refuted by the evidence. In his second and third supplemental statements, Complainant generally reiterates his allegations and takes issue with the actions of individuals other than the Subject 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 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. 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 Judge colluded with others, obstructed justice, sought to cover up crimes or misconduct, lied, 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