

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

**11-19-90132**

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

JUL 30 2020

CIRCUIT EXECUTIVE

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

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**ON PETITION FOR REVIEW**

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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 15 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

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

MAY 06 2020

Judicial Complaint No. 11-19-90132

David J. Smith  
Clerk

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

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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.

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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 August 2018 Complainant filed a 28 U.S.C. § 2254 petition alleging that his rights to “parole considerations” had been unconstitutionally denied. He then filed a motion to recuse the Subject Judge and the assigned magistrate judge, alleging in part that they had a financial interest in the outcome of his case. In October 2018 the magistrate judge issued an order denying the motion to recuse and directing Complainant to either pay the filing fee or move to proceed in forma pauperis (IFP). Complainant filed an objection to the order and filed an IFP motion. In November 2018 the magistrate judge issued an order granting the IFP motion and directing Complainant to amend his § 2254 petition.

The next month, Complainant filed an amended § 2254 petition raising additional claims pertaining to parole. After that, the respondent filed an answer and a motion to dismiss the amended petition. In June 2019 the magistrate judge issued a report recommending that the motion to dismiss be granted and the § 2254 petition be dismissed with prejudice as untimely. Over Complainant’s objections, the Subject Judge entered an order adopting the report and recommendation, noting that Complainant’s objections to it were meritless, and a judgment was entered dismissing the case.

Complainant filed a notice of appeal and a motion for leave to appeal IFP. In September 2019 the Subject Judge entered an order denying the IFP motion, finding that

the appeal was not brought in good faith because there were no issues of arguable merit. The order stated that Complainant must pay the entire appellate filing fee if he wished to proceed with his appeal. In December 2019 this Court clerically dismissed the appeal for want of prosecution.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that his Complaint “involves unauthorized assignment, adjudications, and disregard of clearly established precedent.” He complains that the Subject Judge participated in his federal case when the Subject Judge was a witness and purported victim in a state court criminal case where Complainant was charged with filing a false lien. Complainant contends that the Subject Judge violated statutes requiring his disqualification and alleges that the Subject Judge was not impartial and disinterested.

Complainant also alleges that the Subject Judge disregarded his objections to the magistrate judge’s report and recommendation and “rubber stamp[ed]” it. He takes issue with the Subject Judge’s order denying his motion to proceed IFP on appeal, alleging that the Subject Judge acted maliciously in requiring him to pay the filing fee. Complainant asserts that the Subject Judge used his office to frustrate Complainant’s rights in his state and federal court proceedings. Finally, Complainant states that his Complaint does not concern the merits of the Subject Judge’s decisions.

### 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, findings, and orders in the case, including his decision not to recuse, 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 was not impartial, had a conflict of interest, 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**.

  
\_\_\_\_\_  
Chief Judge