

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

APR 09 2020

CIRCUIT EXECUTIVE

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

11-19-90144

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

ON PETITION FOR REVIEW*

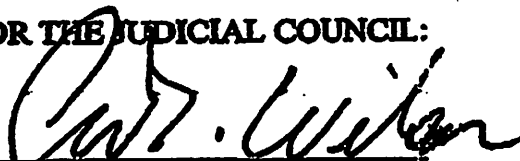
Before: WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MERRYDAY, MOORE, THRASH, LAND, COOGLER, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

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 24 January 2020, and of the petition for review filed by the complainant on 24 February 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.

FILED
ELEVENTH CIRCUIT
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CIRCUIT EXECUTIVE

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

11-19-90145

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

ON PETITION FOR REVIEW*

Before: WILSON, WILLIAM PRYOR, MARTIN, JORDAN, 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 24 January 2020, and of the petition for review filed by the complainant on 24 February 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.

JAN 24 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90144 and 11-19-90145

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge
_____ and 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 Magistrate Judge _____ and United States District Judge _____ (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”).

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in January 2015 an attorney, _____, filed an amended complaint against Complainant, raising claims of defamation, intentional infliction of emotional distress, and interference with advantageous business relationships. _____ asserted that he had represented the guardians for Complainant’s mother in a guardianship proceeding, and Complainant remained aggrieved by the outcome in that matter. He alleged that Complainant had professionally disparaged him in court filings, emails, and postings on the internet. He also alleged that Complainant had personally vilified him by sending offensive emails to members of his family from email addresses that were intended to suggest they were sent by _____, a member of his family, or a business associate. In March 2015 Complainant filed a “Motion to Dismiss SLAPP Lawsuit for Lack of Subject Matter Jurisdiction.”

On March 23, 2015, Judge _____ entered an order referring certain pretrial matters to Judge _____ and requiring the parties to, among other things, complete a form stating whether they consented to have a magistrate judge exercise the jurisdiction

of the district court under 28 U.S.C. § 636(c). The order noted that either party could withhold consent. The next month, Judge _____ issued an order scheduling a telephonic status conference for May 5, 2015.

On April 23, 2015, Judge _____ issued an order to show cause requiring the parties to comply with the March 23, 2015 order by April 27, 2015, and stating that a failure to comply or submit notice of good cause for failure to comply would result in dismissal of the action. The same day, _____ filed a notice of compliance in which he stated that Complainant had been uncooperative and unresponsive. The next day, Complainant filed another motion to dismiss the case, and _____ filed a motion to strike the motion to dismiss.

On April 28, 2015, Judge _____ entered an order giving Complainant until May 6, 2015 to show cause why she had not complied with the court's March 23 or April 23, 2015 orders and stating that a failure to show good cause could result in sanctions, including the entry of default against her under Fed. R. Civ. P. 55. Two days later, Complainant filed a counterclaim against _____ and other individuals and entities. She also filed an emergency application for injunctive relief, seeking to enjoin a state court judge from holding a show cause hearing, and Judge _____ denied the application.

On May 5, 2015, Judge _____ issued an order directing Complainant to show cause by May 7, 2015 why she had failed to participate in a scheduled hearing. Also on May 5, 2015, Complainant filed an amended complaint against a state court judge along with an emergency application for injunctive relief. The same day, Judge _____ entered an order striking the amended complaint as irrelevant to the case and denying emergency injunctive relief.

On May 7, 2015, Judge _____ entered an order directing the clerk to enter default against Complainant due to her failure to defend the action, finding that she had failed to respond to the court's April 28, 2015 show cause order, noting that she had failed to respond to Judge _____ May 5, 2015 show cause order, and noting that she had filed other documents in violation of the local rules. Relying on Rule 41(b) and the court's inherent authority, the order also dismissed Complainant's counterclaim due to her repeated failures to comply with the court's rules and orders. The clerk then entered a default against Complainant, and Judge _____ referred the case to Judge _____ for a determination of damages.

Also on May 7, 2015, Complainant filed an affidavit stating that her email account had been hacked, that she did not receive notice of the May 5, 2015 hearing, and that she was in the process of hiring an attorney. The next day, Judge _____ entered an order stating that because the court had already entered a default on several grounds, the

preliminary status conference would not be rescheduled. Judge _____ noted that he was not making any findings about whether Complainant had received earlier filings.

An evidentiary hearing on the determination of damages was then set for July 2015. In late May 2015, _____ filed a motion for clarification of the order referring the case to the magistrate judge for a determination of damages. The same day, Judge _____ entered an order granting the motion for clarification and stating that: (1) Judge _____ did not have jurisdiction to conduct a “trial” on damages because Complainant had not consented to the exercise of jurisdiction by a magistrate judge; and (2) _____ did not have a right to a jury trial to prove damages following the entry of default.

After additional filings, in July 2015 Judge _____ held an evidentiary hearing on damages at which Complainant was not present, and _____ and _____ testified at the hearing. The next month, Judge _____ issued a report recommending that _____ be awarded a total of \$1.7 million in compensatory and punitive damages and that the court enter certain injunctive relief in his favor. Judge _____ found, among other things, that the “nature, extent, and degree of [Complainant’s] misconduct in this case are considerable,” she “set out to destroy” _____ legal and business careers, and she “aimed to destroy” his personal life.

Complainant filed objections to the report in which she, among other things, alleged that: (1) the court lacked jurisdiction in the case; (2) _____ had filed the lawsuit in retaliation for her exposing his abuse and exploitation of her mother; and (3) she did not receive notice of the evidentiary hearing. The next day, Judge _____ entered an order concerning an *ex parte* telephone call received by his law clerks. The order stated that the caller identified herself as _____ business partner who was referred to anonymously in Judge _____ report, and the caller asserted that the facts about her in the report were false. The order also stated that the caller was told that a phone call was not the proper means of addressing official grievances and that she should seek the assistance of counsel or reach out to the parties to address any issues she may have so those issues could be publicly addressed on the record. The next day, Complainant filed an emergency motion to, among other things, set aside the default.

In December 2015 Judge _____ issued an order: (1) adopting Judge _____ report and recommendation; (2) entering a final judgment in favor of _____ and against Complainant; (3) directing Complainant to remove certain internet postings; (4) permanently enjoining her from continued and repeated publishing of certain statements; and (5) denying her emergency motion on various grounds. With respect to the motion to set aside default, Judge _____ found that Complainant had willfully defaulted and had not otherwise shown good cause to set aside default under Rule 55(c). Judge _____ also found that Complainant was deemed to have received notice of the evidentiary hearing because court orders and notices were sent to the

addresses on file with the clerk of court. With respect to Complainant's jurisdictional argument, Judge _____ determined that _____ had met his burden of establishing diversity jurisdiction.

Complainant appealed. This Court affirmed the district court's entry of default against Complainant, holding that the court had subject matter jurisdiction over the case and did not abuse its discretion in denying her motion to set aside the default judgment based on her contention that she did not receive proper notice before entry of default.

After additional proceedings in the district court, in April 2018 Complainant filed, among other things, a pro se motion to vacate the judgment, alleging in part that: (1) the judgment was the product of "fraud, falsehoods, perjury, [and] manipulation of the court system by" _____; (2) Judge _____ held an unlawful ex parte hearing; and (3) there was no proof that she had created the emails that were sent to _____ family. Judge _____ issued an order denying the motion to vacate as untimely. Complainant appealed, and this Court later affirmed the denial of her motion to vacate the judgment.

Meanwhile, in May 2018 Complainant filed in the district court another pro se motion to vacate the judgment, generally alleging that _____ had committed fraud on the court. In September 2018 she filed a pro se motion to disqualify the Subject Judges and to set aside their orders. Judge _____ entered an order striking the motion to disqualify because an attorney had entered an appearance on behalf of Complainant, and the order denied the second motion to vacate without prejudice to being refiled through counsel if appropriate.

In March 2019 Complainant, through counsel, filed a motion for relief from the judgment and default order, raising various challenges to the judgment and order. The next month, Judge _____ entered an order denying the motion, finding in part that the motion was untimely. Judge _____ also found that Complainant otherwise did not establish she was entitled to the relief sought and did not prove by clear and convincing evidence that _____ perpetrated a fraud on the court. Complainant appealed the order, and this Court later clerically dismissed the appeal for want of prosecution.

In May 2019 Complainant filed in the district court a counseled motion to disqualify Judge _____ from the case, arguing in part that she: (1) had extrajudicial knowledge of the parties' bar status and other information; (2) prejudicially favored _____ assertions; and (3) sought to alter her earlier order entering a default against Complainant by stating that it did not rely on Complainant's failure to respond to Judge _____ show cause order. After that, Complainant filed a notice of suggestion of bankruptcy, stating that an involuntary petition for Chapter 11 bankruptcy had been filed. Later in May 2019, Judge _____ entered an order staying and administratively

closing the case in light of the suggestion of bankruptcy, and she denied all pending motions, including the motion for disqualification, without prejudice to reinstatement upon the lifting of the bankruptcy stay. There have been additional proceedings in the district court.

The record also shows that Judge _____ was the assigned magistrate judge in a case filed in March 2015 by multiple individuals against _____ and others. The parties consented to the jurisdiction of a magistrate judge in that case, and Judge _____ conducted the proceedings and issued orders in the case.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that she is reporting “crimes, criminal conflicts of interest and a complete disrespect and disregard for the law by” the Subject Judges. She alleges that the Subject Judges conspired to use the courts “to perpetrate a glaringly obvious embezzlement racket in collusion with _____,” intentionally deprived Complainant of her rights in order to abet the theft of her assets, and colluded “to engage in criminal activity and to protect each other.” She asserts that her “life has been viciously and deliberately destroyed by” the Subject Judges.

Complainant alleges that the Subject Judges: (1) committed crimes and had a criminal conflict of interest; (2) violated judicial canons regarding restrictions on outside income and requirements for financial disclosure; (3) used their offices for illegal financial gain; (4) likely accepted bribes, gifts, or other personal favors related to the judicial office; (5) conspired with _____ to perpetrate an embezzlement scheme; (6) falsified facts; (7) held *ex parte* proceedings; (8) treated her in a demonstrably egregious and hostile manner; (9) failed to call to the attention of the relevant chief district judge or chief circuit judge reliable information reasonably likely to constitute judicial misconduct; (10) violated judicial rules of procedure and evidence and acted outside the scope of their jurisdiction; (11) are incompetent; and (12) “simulated” court officials in violation of 18 U.S.C. § 912 (Officer or employee of the United States). She also alleges that Judge _____ “bizarre, irrational and contradictory ‘rulings’ and lack of cognitive reasoning” show that she has a “mental disorder.”

Complainant then takes issue with the allegedly “illegal” and “fraudulent” lawsuit filed against her by _____, asserting that he falsely accused her of creating obscene emails to defame him. She states: (1) the Subject Judges knew _____ had a pattern and history of engaging in fraudulent schemes, given the existence of a state court case adjudicating him guilty of felonies; (2) she informed them under penalty of perjury that she had nothing to do with the emails; and (3) they knew _____ was tied to the emails.

Complainant contends that Judge _____ issued an “illegal” show cause order directing Complainant to state whether she consented to have a magistrate judge conduct proceedings after she had already conveyed her objection. She alleges that the order violated a local rule providing that no judge may attempt to persuade or induce a party to consent to the reference of any matter to a magistrate judge, and that the order was a form of coercion and extortion. Complainant asserts that Judge _____ issued a “bizarre contradictory” order stating that a failure to comply with the show cause order would result in dismissal of the action, and that the order was fraudulent, deceitful, and unlawful because Judge _____ held Complainant in default instead of dismissing the lawsuit.

Complainant states that in “another biased and prejudicial ruling,” Judge _____ retaliated against her for violating the show cause order by “wrongfully dismissing” her counterclaim to deprive her of access to the court and obstruct her ability to engage in discovery. She states that she was not able to respond to the order because she was not receiving her mail, and that Judge _____ had been notified of that fact. Complainant contends that the show cause order and default order “criminally and civilly deprived” her of due process and “set [her] up to be embezzled in an illegal ‘trial’” that resulted in an “illegal void judgment” against her.

Complainant asserts that Judge _____ refused to reschedule a status conference after learning that Complainant was not receiving court documents, which was a “vicious, lawless act of a hostile, prejudice[d] and arrogant non-judge.”¹ She complains Judge _____ “repeatedly refused” her motions to set aside the illegal default. She then contends that Judge _____ May 2015 order granting the motion for clarification—in which she stated that Judge _____ did not have jurisdiction to conduct a trial on damages—was “another bizarre contradictory” order because Judge _____ did preside over a trial and issued a judgment without Complainant’s consent. She asserts Judge _____ “illegal, corrupt, color of law” orders show a lack of competency, and that her duplicity, crimes, and “bizarre, contradictory and irrational acts” would lead a reasonable person to conclude she has a mental disorder.

Complainant alleges that the Subject Judges “rewarded” _____ for committing crimes at an “illegal ex parte ‘trial’” over which Judge _____ presided without authority or Complainant’s consent under 28 U.S.C. § 636. She alleges that, at the hearing, the Subject Judges deliberately ignored the rules of evidence and failed to require evidence as to the origin, validity, and authenticity of the emails. She asserts that it “is glaringly obvious to any reasonable third party” that _____ created the emails to perpetrate an embezzlement scheme and the “only possible explanation” is that the Subject Judges required no evidence because they were colluding with _____ in the scheme.

¹ Judge _____ issued the order at issue.

Complainant further alleges that, at the hearing, Judge _____ “criminally colluded in perjured, suborned” testimony by _____ “buddy,” _____, and the Subject Judges hid from Complainant that Judge _____ report was based on perjured testimony and witness tampering. She alleges that she had no notice of the hearing because _____ had intercepted her mail, and Judge _____ “purposely excluded” her from the hearing because he knew she was not receiving her mail.

Complainant states that the Subject Judges committed misconduct and violated the Code of Conduct for United States Judges by failing to report _____ and each other’s misconduct. She asserts that the Subject Judges were on notice of _____ illegal activities due to the September 1, 2015 telephone call received by Judge _____ chambers, and Judge _____ perpetrated a fraud on the court by failing to notify Complainant of the call, withdraw his report, and investigate the crimes reported. Complainant also asserts that Judge _____ “advice” to the caller to reach out to the parties was “unethical and constitutes judicial negligence.”

Complainant alleges that Judge _____ violated laws and canons on restrictions on outside income and requirements for financial disclosure. She asserts that Judge _____: (1) “owns many mutual funds,” including two “where the top 10 holdings are cruise industry stocks”; (2) has been the magistrate judge in hundreds of cases involving the cruise industry; and (3) controls the outcome and financially profits from those cases. She asserts that any reasonable person would conclude that Judge _____ has a “pattern and history of ‘fixing’ cases and accepting bribes in violation of” 18 U.S.C. § 201 (Bribery of public officials and witnesses) and 18 U.S.C. § 208 (Acts affecting a personal financial interest). She also alleges that Judge _____: (1) has a “fundamental criminal conflict of interest under” 18 U.S.C. § 208; (2) violated Canons 3 and 4 of the Code of Conduct for United States Judges; (3) violated his “duties as a public servant”; (4) used his office for private gain in violation of a provision of the Code of Federal Regulations; (5) is “a color of law imposter judge”; and (6) engaged in racketeering activities.

Complainant also contends that Judge _____ owns an interest in approximately 150 stocks and funds, which creates an “appearance of impropriety as a judge with such vast holdings is perceived as having dual loyalties as such vast holding[s] require a large time commitment and the extensive number of investments no doubt result in a high degree of conflicts of which a party may not be aware.”

Finally, Complainant asserts that she is in imminent danger and that her assets have been illegally seized and garnished. She “seeks whistleblower protection from acts of retaliation, coercion, discrimination, intimidation and threats she is experiencing by any judge associated with, acting in collusion with or on behalf of” the Subject Judges. She attached various documents to her Complaint, including excerpts from Judge _____ financial disclosure report.

Supplement

In her supplemental statement, Complainant generally reiterates many of her allegations, contends that two of her appeals are “being neglected,” and states that “[i]t appears this commission is acting as an accomplice and accessory to the embezzlement of [her] assets.”

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’ official actions, findings, rulings, report, recommendations, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that Judge _____ suffers from a disability or that the Subject Judges: (1) committed crimes or had a conflict of interest; (2) violated restrictions on outside income and requirements for financial disclosure; (3) used their offices for personal financial gain; (4) accepted gifts, bribes, or other personal favors related to the judicial office; (5) colluded or conspired with _____ or each other; (6) falsified facts; (7) engaged in improper *ex parte* communications; (8) treated Complainant in a demonstrably egregious and hostile manner; (9) improperly failed to report misconduct; (10) violated the Code of Conduct for United States Judges or acted without authority; (11) were incompetent; (12) “simulated” court officials; or (13) otherwise engaged in misconduct.

Furthermore, contrary to Complainant’s allegation, Judge _____ did not conduct a trial and enter a final judgment without her consent. Instead, Judge _____ conducted an evidentiary hearing on damages and issued a report recommending the

disposition of the matter. See 28 U.S.C. § 636(b)(3) (“A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.”); Callier v. Gray, 167 F. 3d 977, 983 (6th Cir. 1999) (holding that “the referral for determination of damages to the magistrate judge was proper under § 636(b)(3).”).

To the extent Complainant alleges that Judge _____ participated in cases where a cruise company was a party and that he owned mutual funds that held stock in cruise companies, the allegations are insufficient to raise an inference that Judge _____ engaged in misconduct because ownership of a mutual fund generally does not create a financial interest in the fund’s holdings. Canon 3C of the Code of Conduct for United States Judges states in part that a:

judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which . . . the judge knows that the judge, individually or as a fiduciary . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding . . .

Guide to Judiciary Policy (Guide), Vol. 2A, Ch. 2, Canon 3C(1)(c). Under Canon 3C(3)(c)(i), “ownership in a mutual or common investment fund that holds securities is not a ‘financial interest’ in such securities unless the judge participates in the management of the fund.” See also Guide, Vol. 2B, Ch. 2, Advisory Opinion No. 106, “Mutual or Common Investment Funds” (stating in part that “investment in a mutual fund normally will avoid recusal concerns because the judge is not considered to have a direct financial interest in the securities that the fund holds.”). To the extent Complainant is challenging the correctness of a decision not to recuse, that is merits-related and is not a valid basis for an allegation of misconduct. See JCDR 4(b)(1) (“Cognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.”).

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