

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

11-20-90001

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 13 May 2020, and of the petition for review filed by the complainant on 9 June 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

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

11-20-90002

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

JUL 30 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW

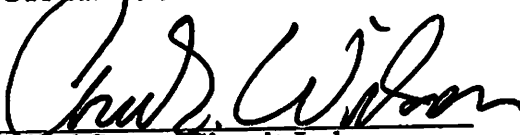
Before: WILLIAM PRYOR, Chief Judge, WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 13 May 2020, and of the petition for review filed by the complainant on 9 June 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 13 2020

David J. Smith
Clerk

Judicial Complaint Nos. 11-20-90001 and 11-20-90002

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”).

Background

The record shows that in October 2005 a federal grand jury issued a superseding indictment charging Complainant and two codefendants with multiple crimes. A couple of months later, Judge _____ entered an ordered severing certain counts for purposes of trial. Following a trial, in March 2006 a jury found Complainant guilty of certain counts and not guilty as to others. Complainant pleaded guilty to one of the remaining counts. In August 2006 Judge _____ sentenced Complainant to a total term of 240 months of imprisonment. This Court later affirmed the district court’s order of restitution in the case.

In August 2008 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence in which he argued his counsel in the criminal proceedings, _____, provided ineffective assistance due to a conflict of interest. Complainant argued that the conflict resulted from _____ concern that he was under investigation for obstruction of justice and witness tampering. Complainant stated that the government played a portion of a recording at trial in which a prospective defense witness, _____, sought to influence a government witness’ testimony and that _____ was involved in the attempted witness tampering. Complainant also stated that _____ was not called as a witness at trial and that _____ was later indicted for witness tampering. Following an evidentiary hearing before a different magistrate judge,

in October 2010 the case was reassigned to Judge _____ as the magistrate judge. The next month, a supplemental evidentiary hearing was held before Judge _____.

In April 2012 Judge _____ issued an order and recommendation in which he among other things, recommended that Complainant's § 2255 motion be denied because he failed to establish ineffective assistance of counsel. Judge _____ found that Complainant did not show _____ was acting under an actual conflict of interest, and that, even if he had, he had not demonstrated that such a conflict had an adverse effect on _____ performance. Among other things, Judge _____ found that the substance of _____ expected testimony did not establish that presenting such testimony, in the face of direct evidence of _____ lack of credibility and possible witness tampering, was a plausible, reasonable alternative. Judge _____ also found that Complainant failed to establish that _____ representation fell below an objective standard of reasonableness or that his decisions prejudiced Complainant.

Over Complainant's objections, in September 2012 Judge _____ issued an order adopting Judge _____ report and recommendation, and the case was dismissed. Complainant filed a motion to alter or amend the judgment, a motion for a certificate of appealability (COA), and a notice of appeal. In February 2013 Judge _____ denied the motion to alter or amend the judgment and the motion for a COA. In July 2013 this Court denied Complainant's motion for a COA.

More than five years later, in August 2018 Complainant filed a motion for relief from judgment, arguing that the court had failed to consider prosecutorial misconduct claims he had attempted to raise. In April 2019 he filed a motion to recuse the prosecutors and Judge _____, asserting that the prosecutors committed criminal acts and Judge _____ had relied on the prosecutors' statements in his decisions and orders. The next month, Judge _____ issued an order and recommendation that denied the motion for recusal and recommended that the motion for relief from judgment be denied because the delay in filing the motion was not reasonable.

Complainant then filed, among other things, objections to the order and recommendation and a motion to recuse the Subject Judges. In February 2020 Judge _____ entered an order denying the motion to recuse, generally finding that Complainant had not established a basis for recusal. Judge _____ also entered an order adopting Judge _____ recommendation and denying Complainant's motion for relief from judgment as untimely.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judges "have both intentionally and with purposeful malice performed unethical and illegal acts to obstruct justice in their official duties as judges" in his cases. He also

alleges that the Subject Judges: (1) “worked in concert with each other and actually colluded with” the prosecutors and others to cover up illegal acts performed by the government and others; (2) aided and abetted a criminal act “if not outright committed a crime”; (3) “intentionally shielded” the prosecutors and others from facing criminal charges; and (4) ignored the unrefuted charges against the prosecutors, which constitutes an abuse of power and a crime.

Complainant contends that he obtained and presented overwhelming evidence of malfeasance by the government, but the Subject Judges took no action in light of that evidence and acted in concert to cover up the misconduct. Complainant alleges that the prosecutors at his trial suborned perjury from government witnesses, knowingly misled the jury, and illegally intimidated _____. He asserts that they tried to discredit _____ by placing a controlled call to him during the trial and trying to elicit a bribe from him. Complainant alleges that he has shown three instances of “actual judicial bias in favor of protecting the illegal acts of the” government. He contends that the Subject Judges “committed a criminal act to obstruct justice by defrauding” Complainant and the country. 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’ official actions, rulings, findings, and orders in his cases, 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 the Subject Judges obstructed justice, colluded to cover up misconduct, committed a crime, were biased, 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**.

A handwritten signature in black ink, appearing to read "Ed Stamer", written over a horizontal line.

Chief Judge