

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

11-20-90017

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL
SEP 10 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 19 May 2020, and of the petition for review filed by the complainant on 1 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

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90017

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 19 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate 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 _____ (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 November 2015 Complainant filed a pro se 28 U.S.C. § 2254 petition for writ of habeas corpus challenging certain state court convictions. After that, he filed multiple motions seeking various types of relief, including a motion for appointment of counsel. In October 2016 the Subject Judge granted the motion for appointment of counsel, appointed the Office of the Federal Public Defender to represent him, and denied his remaining motions without prejudice.

After various proceedings, in January and April 2019 Complainant filed multiple pro se motions seeking various types of relief, including motions alleging that his appointed counsel had committed fraud on the court and that a conflict had arisen with counsel. Also in April 2019, the Subject Judge entered an order striking the motions without prejudice under a local rule because Complainant was represented by counsel. Complainant filed a pro se motion for reconsideration, and in July 2019 the Subject Judge entered an order striking the motion because Complainant was represented by counsel.

After that, Complainant filed more pro se motions seeking various types of relief, and in February 2020 the Subject Judge entered an order striking the motions because he was represented by counsel. Complainant moved for reconsideration and appealed the decision to a district judge. In April 2020 the district judge ordered Complainant’s motions stricken without prejudice to counsel filing any new motions deemed necessary.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's February 2020 order striking his filings, stating that the pleadings were appeals of the Subject Judge's decision to the district judge. Complainant also complains that the Subject Judge struck pleadings because he was represented by appointed counsel, when those pleadings requested leave to file pro se due to fraud committed by appointed counsel. Complainant states that "[t]here are several complaints that the [Subject Judge] is bias[ed]," does not protect litigants' rights, and will not allow appeals of his own decisions. Finally, he complains that his filings were returned to him.

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, 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 biased, violated litigants' rights, 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 Lamer", written over a horizontal line.

Chief Judge