

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

SEP 10 2020

CIRCUIT EXECUTIVE

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

11-20-90021

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

ON PETITION FOR REVIEW*

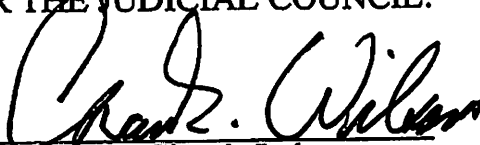
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 9 June 2020, and of the petition for review filed by the complainant on 30 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

* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90021

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

JUN 09 2020

**David J. Smith
Clerk**

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”).

Background

The record shows that in February 2014 a federal grand jury indicted Complainant and a codefendant on charges of conspiracy, mail fraud, wire fraud, and money laundering. Following a trial, in May 2015 the jury found Complainant guilty of multiple counts and was unable to reach a verdict as to other counts. In August 2015 the Subject Judge sentenced Complainant to a total term of 204 months of imprisonment. He filed a notice of appeal.

In March 2016 Complainant filed a Fed. R. Crim. P. 33 motion for a new trial based on newly discovered evidence, which had been prepared by a prisoner. The motion set out that three individuals had provided affidavits stating that the government’s key witness lied at trial, and the affidavits were attached to the motion. The Subject Judge ordered that the motion be stricken because it was authored and submitted by an individual who was not an attorney licensed in the state or admitted to practice in the district. In July 2016 Complainant, through counsel, filed an amended Rule 33 motion for new trial based on newly discovered evidence, arguing that four individuals had submitted affidavits stating that the government’s key witness lied at trial. The affidavits and other documents were attached to the motion.

In December 2016 the Subject Judge issued an order denying Complainant’s amended motion for new trial, finding the affidavits submitted in support of the motion

were not credible and did not constitute new evidence. The Subject Judge noted that three of the four affidavits: (1) initially were submitted with the motion that was stricken because it was authored by an inmate who was engaged in the unauthorized practice of law; and (2) were prepared in the same font and format and were dated the same day. The Subject Judge then stated:

These circumstances indicate a coordinated effort by those involved to manufacture a controversy. Finally, it is not lost on this Court that Defendant's underlying conviction involved an unlawful and fraudulent scheme, one considerably more complex than the scheme Defendant is currently employing in his attempt to garner a new trial. Accordingly, the Court does not find the Defense Affidavits credible.

In conclusion, the Subject Judge stated, "This attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate, is, to say the least, suspect." Complainant filed a notice of appeal as to the order denying the motion for new trial.

Complainant later filed a pro se motion to recuse the Subject Judge and to file a new Rule 33 motion, and the Subject Judge denied the motion for the reasons stated in the December 2016 order and because there was no basis for recusal. Complainant filed a motion for clarification, which the Subject Judge denied. Complainant then filed a third notice of appeal. His three appeals were consolidated, and in March 2019 this Court issued an opinion that, among other things, affirmed Complainant's convictions and sentences, as well as the denial of his Rule 33 motion for new trial.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's statement about a "coordinated effort" to "manufacture a controversy" in his December 2016 order denying the amended motion for a new trial. He asserts the statement is not true, was an unfounded accusation, and shows that the Subject Judge's conduct outside the performance of his official duties had a prejudicial effect on the administration of the business of the courts. Complainant states the Subject Judge "simply made up the facts he used to accuse," which is "misconduct in its plainest form."

Complainant further alleges the Subject Judge "in a hostile manner" accused multiple people of crimes "while explaining his fantastical version of events." He alleges the Subject Judge's conduct is causing a substantial and widespread lowering of public confidence in the courts among reasonable people. He contends his allegations do not relate to the merits of the Subject Judge's decision, and that the Subject Judge's statement is being used to persuade courts in unrelated cases throughout the country.

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 December 2016 order denying Complainant’s amended motion for new trial, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. The Subject Judge’s challenged statement in the order was relevant to the finding that the affidavits in support of the motion were not credible. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge made false statements, treated litigants in a demonstrably egregious and hostile manner, 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**.

/s/ William H. Pryor Jr.

Chief Judge