

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

11-20-90033

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

OCT 29 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

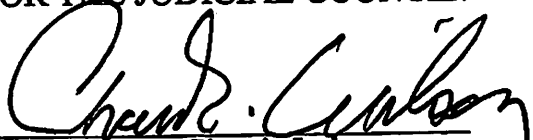
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 15 July 2020, and of the petition for review filed by the complainant on 3 August 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.

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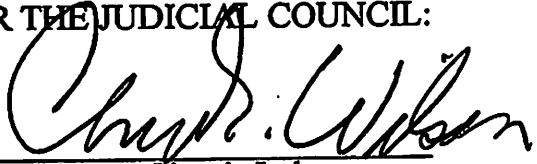
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FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 15 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-20-90033 and 11-20-90034

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 September 2018 a federal grand jury indicted Complainant on one count of being a felon in possession of a firearm, and an attorney was appointed to represent him. In November 2018 a magistrate judge who is not Judge _____ relieved counsel and appointed a new attorney to represent Complainant.

In January 2019 a status conference was held before Judge _____. According to the minute entry of the hearing, Complainant stated he would like to represent himself at trial, a Faretta hearing was held, and Complainant decided he would allow his counsel to continue representing him. Following a trial, a jury found Complainant guilty as charged in the indictment. In April 2019 Judge _____ sentenced Complainant to a term of 120 months of imprisonment. Complainant filed a notice of appeal.

In November 2019 Complainant filed a pro se 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, challenging his conviction and contending he was being unconstitutionally confined. He also filed a motion for a status report or hearing in which he requested to have counsel appointed. In February 2020 Complainant filed a document adding additional grounds to his § 2255 motion, and in June 2020 he filed a document seeking to dismiss Judge _____ from his cases.

The record also shows that in November 2019 Complainant filed a prisoner civil rights action against a defendant and a motion for leave to proceed in forma pauperis (IFP), and the Subject Judges were assigned to the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that at the January 2019 hearing, Judge _____: (1) stated he did not believe Complainant was competent and did not care if he did not like his attorney; (2) violated his right to self-representation; and (3) forced him to continue with his attorney. Next, Complainant states that, in several civil cases, Judge _____ has granted his IFP motions but still required him to pay the filing fee, which he contends is contradictory, made the IFP motions “obsolete,” and “disgraces” the court’s “legal integrity.” Complainant also alleges the Subject Judges “neglect” and “drag their response intentionally” in cases with valid claims.

Complainant then states that, at his sentencing hearing in April 2019, Judge _____ lied and acted like a “bully” when he stated that Complainant could be sentenced above the maximum end of his sentencing guideline range. He takes issue with Judge _____ delay in acting in the § 2255 proceedings, and he states the Subject Judges are intentionally not responding to his § 2255 motion, “which neglects their duty and oath as officers of the court.”

Complainant states that, after trial, Judge _____ informed him that he had 14 days to file an appeal, and after the sentencing hearing, he again informed him that he could file a notice of appeal and that his previous statement about filing the appeal after trial was erroneous. Complainant asserts Judge _____ abused his power and confused Complainant to prolong his illegal incarceration. Finally, Complainant alleges that in November 2019 he stated before Judge _____ that his incarceration was illegal, and Judge _____ stated his civil cases were to be dealt with in another court, which constituted a neglect of his duty.

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, and orders in the 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 neglected their duties, violated their oaths of office, delayed cases with an improper motive, treated him 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