

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

11-20-90045

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

JAN 04 2021

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

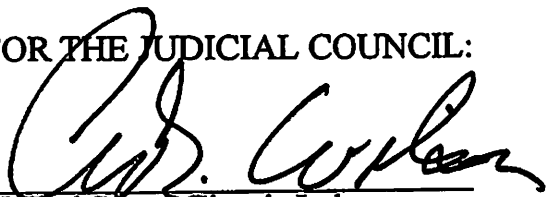
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Marks, the order of Chief Judge William H. Pryor Jr., filed on 12 August 2020, and of the petition for review filed by the complainant on 24 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. and Chief District Judge Mark E. Walker did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 12 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90045

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 March 2019 Complainant filed an amended 28 U.S.C. § 2241 petition for writ of habeas corpus, challenging certain disciplinary sanctions imposed at his place of incarceration. In September 2019 a magistrate judge issued a report recommending that Complainant’s § 2241 petition be dismissed for failure to exhaust administrative and state court remedies and because one of his arguments did not raise a cognizable federal constitutional claim. The next month, a district judge who is not the Subject Judge entered an order adopting the report and recommendation and dismissing the § 2241 petition.

The record shows that in July 2019 Complainant filed an amended § 2241 petition in which he challenged, among other things, certain sanctions imposed at his place of incarceration. In November 2019 a magistrate judge issued a report recommending that the § 2241 petition be dismissed, finding: (1) to the extent he challenged his judgment and sentence, his filing was an unauthorized second or successive habeas petition; (2) to the extent he argued the saving clause allowed review of his claims, his argument lacked merit; and (3) to the extent he challenged his disciplinary report and revocation of gain time, he had not exhausted his administrative remedies. Later that month, a district judge who is not the Subject Judge entered an order accepting the report and recommendation and dismissing the § 2241 petition. Complainant appealed, and this Court later clerically dismissed the appeal for want of prosecution.

The record also shows that in September 2019 Complainant filed an amended § 2241 petition, arguing in part that state courts did not have jurisdiction to order the state Department of Corrections to enforce prison disciplinary sanctions. After various proceedings, in April 2020 a magistrate judge issued a report recommending that the § 2241 petition be dismissed, finding: (1) to the extent Complainant challenged his judgment and sentence, the petition was an unauthorized second or successive habeas petition; and (2) to the extent he challenged the state supreme court's imposition of sanctions for his frivolous filings or that the saving clause allowed review of his claims, his arguments lacked merit. Later that month, the Subject Judge entered an order accepting the report and recommendation and dismissing the § 2241 petition. Complainant then filed, among other things, a motion to alter or amend the judgment, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that in the three above-described cases, the Subject Judge enforced an unofficial practice that systematically prohibited him from exercising his constitutional right “to have state officials prove collateral criminal sanction orders.” Complainant states the Subject Judge should be ordered to submit a written response that could aid in determining whether enforcement of the unofficial policy has divested the district court of subject-matter jurisdiction. He asserts the Subject Judge has conceded the unofficial policy “is extrinsic to record or merits of case” and contends the policy does not comply with binding authority.

Complainant then states his Complaint does not challenges the merits of a decision but challenges constitutional violations enforced by court officials “based upon conservative favoritism without lawful cause.” He states the policy “has completely suspended the federal habeas corpus to state prisoners,” in violation of the United States Constitution and case law. Finally, Complainant states that the Subject Judge and another judge “agreed with malice” to violate the United States Constitution “through suspension of writ of habeas corpus.”

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, or his findings, rulings, and orders in Complainant’s 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 violated his constitutional rights, acted with an illicit or improper motive, 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