

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

11-20-90047

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

OCT 29 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

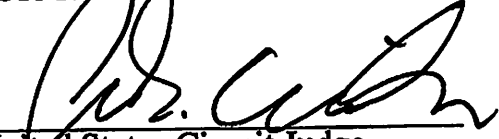
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioners' 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 20 August 2020, and of the petition for review filed by the complainants on 31 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.

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

11-20-90048

**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 petitioners' 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 20 August 2020, and of the petition for review filed by the complainants on 31 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.

AUG 20 2020

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-20-90047 and 11-20-90048

IN THE MATTER OF A COMPLAINT FILED BY
_____, _____, AND _____

IN RE: The Complaint of _____, _____, and _____ 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

_____, _____, and _____ (collectively "Complainants") have 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 November 2017 Complainants filed in state court two amended civil complaints against multiple defendants, and in January 2018 the defendants removed both cases to federal court and later filed motions to dismiss the cases. In March 2018 Judge _____ issued an order consolidating the two cases, finding they had common issues of law and/or fact and the interest of judicial economy and avoidance of unnecessary cost or delay supported consolidation. The order noted that Complainants, as represented by counsel, had no objection to consolidating the two cases.

In July 2018 Judge _____ issued an order and report in which he, among other things, recommended that the defendants' motions to dismiss be granted and that Complainants' claims be dismissed with prejudice, generally finding Complainants were not entitled to relief on their claims. The next month, Judge _____ issued an order adopting the report and recommendation and granting the defendants' motions to dismiss.

In March 2019 Complainants filed a motion to reopen the cases, arguing in part that they had been represented by counsel in one case and proceeding pro se in the other,

consolidating the cases forced them to proceed pro se in both cases, and neither they nor their attorney had received notifications from the court. After that, they filed additional motions seeking to reopen the case, as well as a notice of appeal of Judge _____ order granting the motions to dismiss and a motion to proceed in forma pauperis (IFP) on appeal. In June 2019 Judge _____ issued an order denying the IFP motion after finding the appeal was not taken in good faith. This Court later dismissed the appeal for lack of jurisdiction.

In October 2019 Judge _____ issued an order denying Complainants' motions to reopen the case, finding: (1) the court's dismissal order was properly served on Complainant's attorney because he never withdrew as counsel and Complainants never moved to have him removed as counsel; (2) to the extent the motions could be construed as motions to amend the judgment under Fed. R. Civ. P. 59(e), the motions were untimely and, in any event, there was no basis for amending the judgment; (3) Complainants were not entitled to relief under Fed. R. Civ. P. 60(b)(1); and (4) they were not entitled to an extension of time to file an appeal.

Complainants then filed another motion to reopen, and in November 2019 Judge _____ issued an order denying the motion and reminding Complainants that the court could impose sanctions if they filed another duplicative motion. After that, Complainants filed, among other things, another motion to reopen, and in February 2020 Judge _____ entered an order construing the motion to reopen as a motion for reconsideration and denying it. The order also stated that Complainants would not be permitted to file additional motions to reopen or for reconsideration without leave of court and directed the clerk to submit any such motions to the court before filing them.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants state that they never received notices in the cases, assert that documents were sent to incorrect email addresses, state they have been "locked-out from participating in their cases," and contend the Subject Judges were responsible for the clerk failing to notify them of actions taken in the case. They allege Judge _____ refused to address certain issues, refused to reopen their cases, made biased rulings, and "fabricated" finding in his orders. Complainants contend that Judge _____ "unlawfully terminat[ed]" them from the case, abused his power, exhibited extreme bias, was negligent, obstructed justice, covered up criminal conduct by the clerk of court, and violated their civil rights.

Next, Complainants allege that Judge _____ was negligent, allowed opposing counsel to avoid providing them with updates, and obstructed justice when he consolidated their cases and allowed them to be dismissed. They also allege Judge _____ caused a miscarriage of justice by assuming they were represented by counsel in both cases. Complainants state, "Misconduct and Obstruction of Justice and

Disability” were “overwhelmingly present” in the cases. They also take issue with the actions of individuals other than the Subject Judges, and they attached documents to their 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 Complainants’ allegations concern the substance of the Subject Judges’ official actions, findings, rulings, report, and orders in the cases, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainants challenge, they provide no credible facts or evidence in support of their claims that the Subject Judges were biased, fabricated information, obstructed justice, covered up misconduct, suffered from a disability, 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