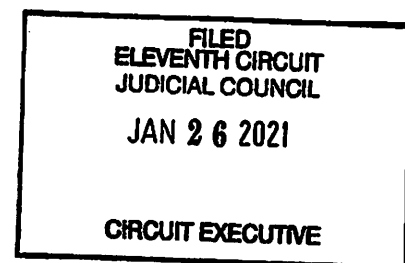


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**11-20-90063**



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

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**ON PETITION FOR REVIEW\***

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Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; 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 25 September 2020, and of the petition for review filed by the complainant on 19 October 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 Timothy J. Corrigan did not take part in the review of this petition.

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90063

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

SEP 25 2020

David J. Smith  
Clerk

IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_

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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.

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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 May 2006 Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus challenging his state court conviction for sexual battery, and he filed an amended petition a couple of months later. After various proceedings, in January 2010 the Subject Judge issued an order denying the amended § 2254 petition with prejudice, denying a motion for summary judgment Complainant had filed, and granting him a certificate of appealability on one issue. The Subject Judge found that certain claims were procedurally defaulted and that Complainant failed to establish he was entitled to relief on the remaining claims. Complainant filed a notice of appeal, and in July 2011 this Court issued an opinion affirming the denial of his § 2254 petition. After that, Complainant filed in the district court a motion to vacate the judgment and a motion to alter or amend the judgment, and the Subject Judge denied both motions.

The record also shows that in April 2020 Complainant filed in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ a § 2254 petition for writ of habeas corpus challenging his state court sexual battery conviction. Later that month, the case was transferred to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_. In May 2020 the Subject Judge issued an order dismissing the § 2254 petition without prejudice, finding it was an unauthorized second of successive habeas petition and the court did not have authority to consider it. Complainant appealed and moved to proceed in forma pauperis (IFP) on appeal, and in September 2020 this Court

issued an order denying Complainant's IFP motion because he could not raise a non-frivolous argument regarding the dismissal of his § 2254 petition.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge "established a pattern of judicial bias and prejudice towards" him in the January 2010 and May 2020 orders denying and dismissing his habeas petitions. Complainant contends the dismissal of his second petition for lack of jurisdiction constituted structural error, which, among other things, violated his constitutional rights. Complainant then alleges the Subject Judge showed "extreme bias and prejudice" in both orders by stating that he had considered the record, contending there was no testimony from the alleged victim that she was sexually battered by Complainant.

Next, Complainant alleges the Subject Judge showed bias and prejudice: (1) in considering Complainant's claim of actual innocence and innocence as a matter of law; (2) in failing to determine that Complainant was innocent of the crime and that a certain element of the crime was not proven; (3) in allowing the state to use certain evidence to prove its case; (4) in finding there was no other proper corroborative evidence; and (5) by receiving "ex parte evidence from the state and assisted in the cover up of a Brady violation, in the prior habeas petition." Complainant also raises allegations of misconduct against the prosecutor and states there was a "due process violation of the advocate-witness rule by the prosecutor, rendering the entire trial unfair."

### 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, rulings, and orders in the cases, 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 or prejudiced against Complainant, engaged in improper ex parte communications, 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