

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

11-20-90073

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

JAN 26 2021

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

Before: ROSENBAUM, NEWSOM, GRANT, and LUCK, Circuit Judges;
MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, HALL, TREADWELL,
WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Rosenbaum, Grant, Luck, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 14 October 2020, and of the petition for review filed by the complainant on 3 November 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:

s/Robin S. Rosenbaum

United States Circuit Judge

* Chief Circuit Judge William H. Pryor Jr. and Circuit Judges Charles R. Wilson, Beverly B. Martin, Adalberto Jordan, Jill Pryor, and Elizabeth L. Branch did not take part in the review of this petition.

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90073

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 14 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 September 2019 Complainant filed a lawsuit against multiple defendants, an application to proceed in forma pauperis (IFP), and an “Affidavit of Financial Statement” in which he stated he did not possess any gold or silver coins. Later that month, the Subject Judge entered an order: (1) stating the matter came before the court on a sua sponte examination of the record; (2) dismissing the complaint as frivolous; and (3) denying all pending motions as moot. Complainant filed a notice of appeal and other documents, and this Court later dismissed the appeal for lack of jurisdiction.

The record also shows that in September 2019 Complainant filed a civil action against multiple defendants, an application to proceed IFP, and an “Affidavit of Financial Statement.” Later that month, the Subject Judge entered an order: (1) stating the matter came before the court on a sua sponte examination of the record; (2) dismissing the complaint as frivolous; and (3) denying all pending motions as moot. Complainant then filed, among other things, a notice of appeal and two Affidavits of Financial Statement, one of which was docketed as a motion for leave to appeal IFP. In July 2020 the Subject Judge entered an order denying the IFP motion, finding none of Complainant’s filings established that he was entitled to proceed IFP. This Court later dismissed Complainant’s appeal for lack of jurisdiction.

The record shows that in May 2020 Complainant filed a civil action against one defendant and an Affidavit of Financial Statement. The same month, the Subject Judge issued order: (1) stating the matter came before the court on a sua sponte examination of the record; (2) dismissing the complaint as frivolous; and (3) denying all pending motions as moot. Complainant then filed, among other things, a notice of appeal and three Affidavits of Financial Statement, one of which was docketed as a motion for leave to appeal IFP. In June 2020 the Subject Judge entered an order denying the IFP motion, finding Complainant failed to show that he was entitled to proceed IFP.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts the Subject Judge violated his human rights by denying him leave to proceed IFP in the cases and misrepresented that his Affidavit of Financial Statements were considered sua sponte. He also alleges that “[s]omeone” tampered with his filings, that the Subject Judge’s demand for a financial statement was unconstitutional, and that the Subject Judge committed, among other things, “Perjury of Oath.” He attached documents to his 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 Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in Complainant’s 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 violated his oath of office 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