

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

11-20-90074

**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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 14 2020

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90074

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate 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 _____ (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 August 2019 Complainant filed a civil action against two 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. In May 2020 the Subject Judge issued a report recommending that the IFP motion be denied and the complaint be dismissed without prejudice for violating Fed. R. Civ. P. 8. After that, Complainant filed an amended complaint and other documents, and in late-May 2020 a district judge dismissed the case, finding the amended complaint failed to state a claim and was frivolous. Complainant appealed and this Court later clerically dismissed the appeal for want of prosecution.

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 case and misrepresented that his Affidavit of Financial Statement was a motion. 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, report, and recommendations 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 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