

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

11-20-90082

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

FEB 26 2021

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

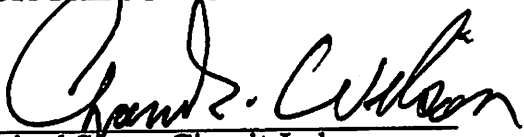
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 3 December 2020, and of the petition for review filed by the complainant on 21 December 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**.

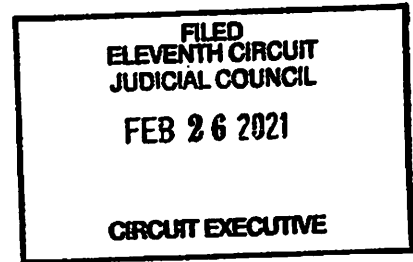
FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Chief Circuit Judge William H. Pryor Jr. and Chief District Judge J. Randal Hall did not take part in the review of this petition.

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

11-20-90083



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

ON PETITION FOR REVIEW*

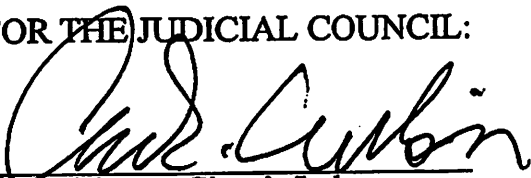
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 3 December 2020, and of the petition for review filed by the complainant on 21 December 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 J. Randal Hall did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 03 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-20-90082 and 11-20-90083

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ 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

_____ (“Complainant”) has 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”).

As an initial matter, after Complainant filed his Complaint, he filed three supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in September 2013 Complainant filed a 42 U.S.C. § 1983 prisoner civil rights action against multiple defendants and a motion for leave to proceed in forma pauperis (IFP), and Judge _____ entered an order granting the IFP motion. Complainant then filed multiple motions seeking to amend his complaint, and in October 2013 Judge _____ issued an order finding Complainant’s filings amounted to a shotgun pleading, denying the motions to amend as moot, and directing him to file an amended complaint that complied with various requirements.

In November 2013 Complainant filed an amended complaint, and he then filed multiple motions seeking to, among other things, amend the complaint. In January 2014 Judge _____ issued a report recommending that the amended complaint be dismissed with prejudice and Complainant’s motions be denied as moot, finding he disregarded the court’s order that he cease submitting shotgun pleadings and amending his complaint in a piecemeal manner. Over Complainant’s objections, in March 2014 Judge _____ issued an order adopting the report and recommendation, dismissing the amended

complaint with prejudice, and denying multiple motions as moot. Complainant appealed, and this Court later dismissed the appeal as frivolous.

After that, Complainant filed additional motions in the district court, and in March 2015 Judge _____ issued an order denying the motions because the case was closed. Later in March 2015, Complainant filed another motion to “add” to the case and other proceedings, and Judge _____ issued an order denying the motion as moot and directing that, among other things, any future cases Complainant sought to commence IFP would be screened to determine whether he had stated a claim with arguable merit. Over five years later, Complainant filed two notices of appeal, and this Court dismissed both appeals for lack of jurisdiction.

The record also shows that in November 2013 Complainant filed a § 1983 prisoner civil rights action against multiple defendants and a motion for leave to proceed IFP, and Judge _____ granted the IFP motion. In January 2014 Judge _____ issued a report recommending that the complaint be dismissed because Complainant: (1) failed to exhaust his administrative remedies; and (2) abused the judicial process by providing dishonest information about his prior filing history. In February 2014 Judge _____ issued an order adopting the report and recommendation and dismissing the case without prejudice.

Finally, the record shows that in June 2020 Complainant filed a 28 U.S.C. § 2254 petition for a writ of habeas corpus in a district court. The next month, the case was transferred to the United States District Court for the _____ District of _____, and Judge _____ became the presiding district judge. After that, Complainant filed, among other things, a motion to recuse Judge _____, generally arguing he acted with malice in connection with Complainant’s previous cases.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant: (1) takes issue with the processing of his filings in his cases; (2) appears to allege the Subject Judges were overtly and obviously prejudiced against him; (3) states that the Subject Judges are “too busy”; and (4) complains that nothing has been done in connection with certain filings that did not involve the Subject Judges.

Supplements

In Complainant’s first supplemental statement, he asserts Judge _____ is prejudiced with respect to Complainant’s § 2254 petition. In the second, he alleges that Judge _____ used a certain document to thwart §1983 actions he had filed, and that Judge _____ acted with malice to thwart a certain appeal. In the third supplement, Complainant asserts that Judge _____ has repeatedly thwarted justice, and he complains that Judge _____ failed to consider certain information.

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 Judges’ official actions, rulings, findings, reports, recommendations, and orders in Complainant’s 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 Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judges were prejudiced against him, acted with malice, 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