

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JUN 30 2021

CIRCUIT EXECUTIVE

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

11-21-90004

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

ON PETITION FOR REVIEW*

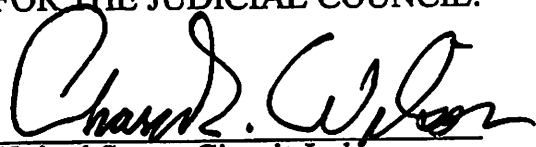
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, CORRIGAN, COOGLER, DuBOSE, BATTEN, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 7 April 2021, and of the petition for review filed by the complainant on 10 May 2021, 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.

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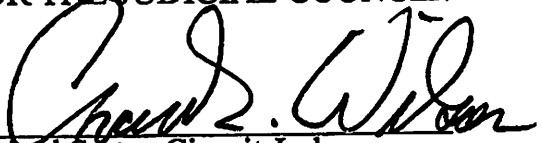
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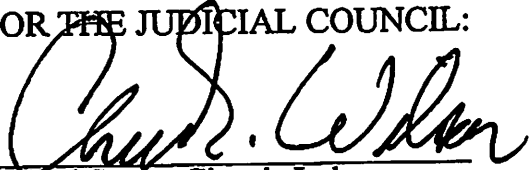
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**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90007

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JUDICIAL COUNCIL

JUN 30 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, CORRIGAN, COOGLER, DuBOSE, BATTEN, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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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.

APR 07 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-21-90004 through 11-21-90007

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former United States Magistrate Judge _____, United States Magistrate Judge _____, and United States District Judge _____ of the United States District Court for the _____ District of _____, 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 former United States Magistrate Judge _____, United States Magistrate Judge _____ and United States District Judges _____ and _____ (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”). Judge _____ retired as a magistrate judge as of _____.

Background

The record shows that in August 2005 a federal grand jury issued an indictment in the United States District Court for the _____ District of _____ charging Complainant with two drug-related offenses. An Arraignment Information Sheet shows that Complainant appeared before a magistrate judge who is not one of the Subject Judges and entered a plea of not guilty. The case proceeded to trial before Judge _____, and in November 2005 a jury found Complainant guilty as charged in the indictment. Judge _____ later sentenced Complainant to a total term of 360 months of imprisonment. Complainant appealed, and this Court later affirmed his convictions.

In June 2009 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, arguing in part that his constitutional rights were violated because he was not present or represented at the arraignment. In June 2010 Complainant filed a motion requesting that the court order the production of the audio recording of his arraignment hearing, contending the transcript of the hearing was incomplete and he was not present during the hearing.

In December 2010 Judge _____ issued an order denying the motion for production of the audio recording, finding: (1) Complainant cited no authority allowing the court to provide him with a free copy of the arraignment audio recording; (2) in any event, he would not be entitled to an audio recording because he was not proceeding *in forma pauperis* (IFP); and (3) he had not shown that the audio recording was needed to resolve any claim in his § 2255 motion, as he had not shown the transcript was inaccurate or fraudulent and there were other documents in the record that confirmed he was present during the arraignment. Complainant appealed the order, and this Court later dismissed the appeal for lack of jurisdiction.

In April 2011 Judge _____ issued a report recommending that Complainant's § 2255 motion be denied, finding in part that he provided no evidence supporting that the transcript of the arraignment was inaccurate. Over Complainant's objections, Judge _____ issued an order adopting the report and recommendation and denying the § 2255 motion. Complainant filed motions for reconsideration and to set aside the order, which Judge _____ denied. Complainant appealed, and in October 2011 this Court denied him a certificate of appealability (COA), holding that he failed to make the requisite showing.

After that, Complainant filed, among other things, a motion to recuse Judge _____, alleging that he was biased in favor of the government and allowed the government to make intentional misrepresentations and knowingly use perjured testimony at trial. Judge _____ issued an order that denied the motion to recuse, finding Complainant failed to assert any legitimate ground for recusal and essentially complained about adverse rulings. Complainant appealed the order, and in January 2017 this Court denied him a COA.

The record also shows that in October 2018 Complainant filed in the United States District Court for the _____ District of _____ an action under the Freedom of Information Act (FOIA), seeking an audio recording of the arraignment in his criminal case and certain video footage. He also filed a motion for leave to proceed IFP. A magistrate judge issued a report recommending that the action be dismissed without prejudice under 28 U.S.C. § 1915(g) because he had at least "three strikes."

Over Complainant's objections, in December 2018 Judge _____ issued an order: (1) noting that the complaint did not allege Complainant was in imminent danger of serious physical injury; (2) adopting the report and recommendation; and (3) dismissing the action without prejudice. Complainant later filed a motion for reconsideration, which Judge _____ denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ and others colluded to intentionally deprive him of his formal

arraignment hearing and failed to ensure that his constitutional rights and rights to pre-trial hearings were not violated. He complains that Judge _____ failed to make certain testimony a part of the transcript and allowed a prosecutor to “switch the arresting officer” at trial. Complainant states that a prosecutor failed to provide an officer’s supplemental report at the end of trial as she had promised to do, and the “only inference that can be drawn is Judge _____ is personal friends and perhaps worked in the DA’s office with [two prosecutors] for him to allow such abuse of power in his court.”

Next, Complainant alleges that Judge _____ acted to cover up that Judge _____ brought Complainant’s case to trial despite that he had been absent from his arraignment, and that Judge _____ failed to recognize that Complainant had attempted to obtain an audio recording of the arraignment.

He complains that Judge _____ dismissed his action under the FOIA, contending Judge _____ failed to address the imminent-danger exception, and he complains that Judge _____ failed to respond to an inquiry concerning whether he was related to a prosecutor.

Complainant then alleges Judge _____ intercepted all of his *pro se* filings. He states that “district judges” used their office to provide special treatment for friends or relatives. He also takes issue with the actions of individuals other than the Subject Judges.

Discussion

Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding,’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge _____, in light of his retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge _____.

Judges _____, _____, and _____

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 Judges _____, _____, and _____ official actions, findings, rulings, report, recommendations, and orders in the cases, the allegations are directly related to the merits of those judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that: (1) Judge _____ colluded with others to deprive Complainant of his arraignment, was biased, had a conflict of interest, or allowed prosecutors to abuse their power; (2) Judge _____ acted to cover up misconduct by Judge _____; or (3) Judges _____, _____, or _____ used their offices to give special treatment to friends or relatives or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judges _____, _____, and _____, 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** to the extent it concerns Judges _____, _____, and _____.

/s/ William H. Pryor Jr.

Chief Judge