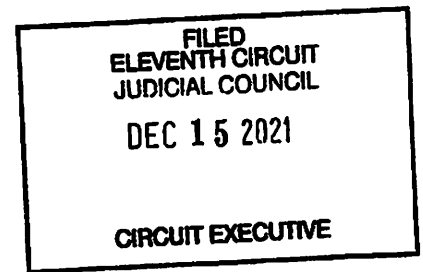


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90059



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

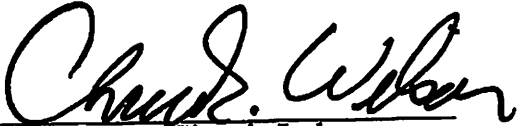
ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on June 21, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on August 9, 2021, and the petition for review filed by petitioner on September 20, 2021. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90059

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 09 2021

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 January 2020 Complainant filed a *pro se* 28 U.S.C. § 2254 petition for writ of habeas corpus challenging a certain state court conviction. He later filed a “Motion for an Objection to a Pretrial Disclosure Document” in which he argued that a certain document should not be considered, and he attached various state court documents to the motion. The Subject Judge issued an order denying the motion, finding it did not state proper grounds to strike pleadings. In April 2020 the respondent filed a response to the § 2254 petition, and the next month, Complainant filed a reply, a motion to strike the response, and a motion for sanctions against the respondent.

In June 2020 the Subject Judge issued an order denying the motion to strike and motion for sanctions, finding the motion to strike was untimely because it was not filed before Complainant filed his reply to the response and, in any event, there was no basis to grant the motion to strike and sanctions were not warranted. In March 2021 Complainant filed a motion for summary judgment, and the Subject Judge issued an order denying the motion without prejudice. Complainant filed a motion for reconsideration, which the Subject Judge denied.

After that, Complainant filed a “Notice to the Court,” and he attached an “Affidavit of Bias or Prejudice” in which he generally argued that the Subject Judge was biased against him and in favor of the respondent. He then filed a motion for relief from

judgment, which the Subject Judge denied. Complainant filed a notice of appeal, and this Court later dismissed the appeal for lack of jurisdiction.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge allowed the state court, a non-party, to file a document on the record and considered it “in favor of the respondent as against the petitioner in the exhaustion of state remedies.” Complainant states that “[t]his act of bias and prejudice was personal because district court judges are not require[d] or authorize[d] to speculate or choose portions of the record or documents the respondent relies upon, nor decide which specific facts might support the respondent’s defenses.”

Next, Complainant takes issue with the Subject Judge’s consideration of various filings in the absence of a report and recommendation from the magistrate judge, contending the Subject Judge exhibited “personal bias” and showed favoritism toward the respondent in considering and ruling on those filings. He takes issue with the processing of certain documents he filed, asserting they “should have been considered as filed correctly” because he was proceeding *pro se*. Complainant also contends the Subject Judge: (1) exhibited personal bias and prejudice in “trying to apply” a heightened standard in the case; (2) violated Complainant’s procedural due process rights; and (3) “in furtherance of his personal bias and prejudice,” made rulings and issued orders after being notified that Complainant filed an affidavit of bias and prejudice against him.

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 above-described 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 was biased or prejudiced against him or in favor of the respondent 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