

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

NOV 09 2021

CIRCUIT EXECUTIVE

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

11-21-90061

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

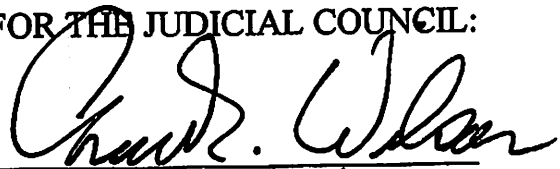
ON PETITION FOR REVIEW

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 24, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on August 17, 2021, and the petition for review filed by petitioner on September 10, 2021. No judge on this panel 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. 11-21-90061

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 17 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”).

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

Background

The record shows that in June 2020 Complainant filed a civil action against multiple defendants seeking damages for being medicated against his will as a pretrial detainee. He also filed a motion to proceed *in forma pauperis*, which a magistrate judge granted. The magistrate judge then issued a report recommending that Complainant’s due process claim that he was involuntarily administered medication be allowed to proceed against three defendants and that the remaining defendants be dismissed under 28 U.S.C. § 1915A. After that, Complainant filed an amended complaint.

In July 2020 the Subject Judge issued an order adopting the report and recommendation, noting Complainant had filed an amended complaint, and stating the amended complaint superseded the original complaint. In October 2020 the defendants filed motions to dismiss the amended complaint, in one of which two defendants argued that Complainant failed to disclose his prior lawsuits. Later that month, Complainant filed, among other things, a “Motion for Leave to File an Amended Complaint” disclosing multiple previous lawsuits he had filed.

The magistrate judge then issued a report recommending in part that the defendants' motions to dismiss be denied and that Complainant's motion for leave to amend his complaint be granted only to the extent that he provided his previous litigation history. The magistrate judge stated that Complainant apparently filed the motion for leave to amend his complaint in response to the motion to dismiss based on his failure to disclose his litigation history. The defendants filed objections to the report and recommendation, and Complainant filed, among other things, three motions to amend his complaint.

In December 2020 the Subject Judge issued an order that sustained two defendants' objections to the report and recommendation, adopted in part the report and recommendation, granted the two defendants' motion to dismiss, dismissed the complaint for abuse of judicial process, and denied as moot Complainant's motions to amend his complaint. The Subject Judge stated that Complainant "did not respond to the motion to dismiss" or otherwise attempt to justify why he provided "materially false information in his complaint form," but that he instead filed a motion for leave to file an amended complaint that fully disclosed his litigation history.

The Subject Judge disagreed with the magistrate judge's determination that the court should permit Complainant to amend his complaint to add his litigation history after the defendants filed their motion to dismiss, stating that doing so would overlook his abuse of the judicial process. The Subject Judge found that the sanction of dismissal without prejudice was proper in light of Complainant's "extensive history of filing numerous vexatious and frivolous pleadings and motions" and his "failure to even attempt to justify his plainly false pleadings."

Complainant filed a motion for reconsideration, which the Subject Judge denied. He then filed multiple motions seeking various types of relief, including two motions for leave to file an amended complaint, another motion for reconsideration, and a motion to recuse the Subject Judge. In May 2021 the Subject Judge entered an order denying Complainant's motions and directing the clerk to return any future submissions to him in light of his repeated filing of frivolous and vexatious motions in the case. Complainant filed notices of appeal, and this Court later clerically dismissed the appeals for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judge improperly refused to disqualify or recuse himself from the case, did not follow the protocol for recusal, and improperly continued to act in the case despite that a motion to recuse had been filed. Complainant alleges the Subject Judge committed

impeachable offenses, lied, violated his oath of office, committed fraud on the court, showed bias and prejudice against him by threatening him with sanctions, and “conspir[ed] to kill” him. He appears to allege the Subject Judge delayed considering the magistrate judge’s report and recommendation to see if Complainant would die from COVID-19.

Next, Complainant alleges the Subject Judge lied by stating he did not file an objection to the defendants’ motions to dismiss, and that the Subject Judge committed the crimes of racketeering and mail fraud by lying on a legal document. He also states he has been told “the county is pulling string with the Judge to dismiss” his case. He requests that criminal charges be brought against the Subject Judge.

Supplement

In his supplemental statement, Complainant appears to allege that the Subject Judge lied and violated his oath of office by stating Complainant filed an amended complaint when he instead filed a motion seeking leave to amend his complaint. He also appears to allege the Subject Judge is corrupt and took advantage of him because he does not have access to the internet. He attached documents to his supplement.

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 lied, violated his oath of office, committed fraud on the court, was biased or prejudiced against Complainant, was part of a conspiracy, delayed acting in the case with an improper motive, committed crimes, 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