

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

FEB 22 2022

CIRCUIT EXECUTIVE

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

11-21-90085

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

ON PETITION FOR REVIEW

Before: JORDAN, 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 August 13, 2021, the order of Acting Chief United States Circuit Judge Charles R. Wilson filed on October 21, 2021, and the petition for review filed by petitioner on November 24, 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 Acting Chief Judge Wilson. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

CONFIDENTIAL

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90085

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”).

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 March 2020 Complainant filed a *pro se* civil rights complaint against multiple defendants and a motion for leave to proceed *in forma pauperis* (IFP). Later that month, he filed an amended complaint and then filed additional motions, including a motion for the appointment of counsel. In April 2020 the Subject Judge entered an order granting the IFP motion and denying the motion for appointment of counsel. The Subject Judge then issued a report recommending that Complainant’s excessive-force claim be allowed to proceed against one defendant and that the remaining defendants and claims be dismissed. Complainant filed a motion for reconsideration. In June 2020 a district judge entered an order adopting the Subject Judge’s report and recommendation and denying the motion for reconsideration.

After that, both parties filed a motion for summary judgment. In February 2021 the Subject Judge issued an order and report in which he, among other things, recommended that the defendant’s motion for summary judgment be granted and that Complainant’s motion for summary judgment be denied. The Subject Judge also

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ELEVENTH CIRCUIT

OCT 21 2021

David J. Smith
Clerk

addressed Complainant's "unfounded and highly inappropriate accusations" that certain individuals committed mail fraud and "warn[ed] [Complainant] that the Court will not stand for any such baseless accusations, and should [Complainant] fail to heed this warning the Court will impose sanctions against him."

The district judge entered an order adopting the report and recommendation, granting the defendant's motion for summary judgment, and denying Complainant's motion for summary judgment. Complainant then filed, among other things, a motion to disqualify the Subject Judge, which the district judge denied.

The record also shows that in June 2020 Complainant filed a *pro se* civil action against multiple defendants seeking damages for being medicated against his will as a pretrial detainee. He also filed a motion to proceed IFP, which the Subject Judge granted. The Subject 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. After that, Complainant filed an amended complaint.

In July 2020 the district 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 Subject 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 Subject 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 district 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 district judge disagreed with the Subject 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.

Complainant then filed multiple motions seeking various types of relief, and in May 2021 the district 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 takes issue with the Subject Judge's failure to recuse himself from the above-described cases, alleges the Subject Judge demonstrated bias and prejudice against him, and threatened him as a *pro se* litigant. He also takes issue with the actions of other judges who are not the Subject Judge. He attached documents to his Complaint.

Supplement

Complainant's supplemental statement contains additional attachments but no new allegations.

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, reports, recommendations, and orders in the above-described cases, 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 Complainant, treated him in a demonstrably egregious or hostile manner, 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**.



Acting Chief Judge