

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

FEB 22 2022

CIRCUIT EXECUTIVE

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

11-21-90086

**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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 21 2021

David J. Smith
Clerk

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90086

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Circuit Judge
_____ of the United States Court of Appeals for the _____ Circuit,
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
Circuit 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 two
supplemental statements. The filing of the supplemental statements is permitted. *See*
11th Cir. JCDR 6.7.

Background

The record shows that in April 2020 Complainant filed a *pro se* civil rights
complaint against multiple defendants and a motion for leave to proceed *in forma*
pauperis, which a magistrate judge granted. Complainant then filed a supplemental
complaint. In July 2020 the district judge dismissed Complainant’s access-to-the-courts
claims raised in his initial complaint but allowed his retaliation claim raised in his
supplemental complaint to proceed. In February 2021 the district judge entered an order
dismissing the claims against one defendant for abuse of the judicial process and
dismissing the claims against two other defendants for lack of service. In May 2021
Complainant filed a notice of appeal.

In July 2021 a panel of this Court that included the Subject Judge issued an order
dismissing the appeal for lack of jurisdiction, holding Complainant’s notice of appeal was
untimely to appeal from the district court’s order and judgment. Complainant then filed a
motion for reconsideration and a motion to recuse the Subject Judge, and in October 2021
the panel issued an order denying those motions.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge committed the felony of making false statements on federal documents, in violation of 18 U.S.C. § 1512. He asserts the Subject Judge “clearly made a statement in conspiracy with” others, and he appears to allege the Subject Judge lied by determining that this Court lacked jurisdiction over his appeal. He also appears to allege the Subject Judge sought to prevent him from filing a timely appeal and sent him a consent form “to cover it up.” He attached a document to his Complaint.

Supplements

Complainant two supplemental statements both contain a copy of his Complaint and additional attachments.

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 orders on appeal, 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 committed a crime, made false statements, was part of a conspiracy, 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