

Post Office Box 1571
Monroeville, AL 36461

March 24, 2000

Mr. Thomas K. Kahn, Clerk
United States Court of Appeals
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

RE: Petition for Review of Order of Chief Judge Anderson Dismissing
Judicial Misconduct Complaint #00-0003

Dear Mr. Kahn:

Pursuant to Rule 5 of the Judicial Council of the Eleventh Circuit Governing Complaints of Judicial Misconduct and Disability under 28 U.S.C. Section 372 (c), I hereby petition the Judicial Council of the Eleventh Circuit for review of the Order of Chief Judge R. Lanier Anderson III, dated February 7, 2000, dismissing my judicial misconduct complaint against U. S. District Judge Lacey A. Collier of the Northern District of Florida. This petition for review is timely pursuant to this Circuit's Addendum Three, Rule 5(a), having been filed within 30 days of the February 14, 2000 date on your letter of the Clerk's office transmitting the dismissal Order and within 10 days of your extended due date of March 27, 2000.¹

¹ On March 15, 2000, I filed a timely petition for review which was rejected on three grounds. These grounds were that the petition "identifie[d] more than one case number," that "it identifie[d] four judicial officers by name," and that "it . . . attached a group of exhibits which [were] not authorized by Rule 5(b) of Addendum III." By letter dated March 20, 2000, I responded to these objections. As to the objection relating to the attachment of exhibits, I stated the following:

"I do not see where that rule bars me from including exhibits. It simply says that a petition for review shall be 'in the form of a letter.' Letters routinely contain attachments or enclosures. Would it be less objectionable if I refer to the documents as attachments or enclosures? I might point out that my complaint annexed Exhibits 'A' and 'B,' and there was no objection. I see no reason why the petition for review could not likewise include exhibits, if necessary referred to as attachments or enclosures. Indeed, it is in the interest of the Judicial Council to have those documents supplied by me since otherwise it would have to independently obtain them either from the Judicial Conference or from law library research. This would require the Judicial Council to expend otherwise needless time and effort since it plainly could not evaluate the petition without examining the referred-to documents which are central to my arguments."

Nevertheless, I was required to revise the petition to exclude the exhibits. The position of the Office of Circuit Executive is that I must delete all exhibits, attachments, and enclosures. As a consequence, the five different exhibits that were annexed to my original petition have not been furnished. They are incorporated herein by reference, and I trust that the Judicial Council will secure copies of these documents on its own from the Judicial Conference or from law library research.

**THE CHIEF JUDGE'S DISMISSAL ORDER IS NON-CONFORMING TO THE
REQUIRED STANDARDS FOR ORDERS DISMISSING COMPLAINTS**

At the outset, review must be granted because the Order, three sentences in length, is wholly conclusory. In dismissing the complaint's allegations on the grounds that they are "directly related to the merits of a decision or procedural ruling" and /or "successive," it does not identify a single one of those allegations, nor identify what they are successive to. It does not refer to my prior judicial misconduct complaint, let alone the date or assigned docket number.

As such, this conclusory, boilerplate Order is completely non-conforming with the 1993 recommendation of the National Commission on Judicial Discipline and Removal (pp. 108-9), endorsed by the Judicial Conference in its Report of the Proceedings of the Judicial Conference of the United States, March 15, 1994 (p. 28), based on the recommendation of its Committee to Review Circuit Council Conduct and Disability Orders (Report, pp. 22-24, Addendum, pp. 6-8), calling for reasoned, non-conclusory dismissals. This is consistent with the Commentary on Rule 4 of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (p. 20), stating that the "statutory purposes" of 28 U.S.C. 372 (c) are best served when the chief judge's orders disposing of complaints are "relatively expansive."

It must be noted that my prior March 18, 1994 judicial misconduct complaint (#94-1047) was also improperly dismissed by a non-conforming, conclusory order. Moreover, that March 24, 1994 Order was based on a false claim that my complaint consisted of "generally conclusory allegations." Only by concealing every allegation of the complaint was the dismissal Order able to falsely contend that the complaint contained "no allegations. . . [of] 'conduct prejudicial to the effective and expeditious administration of the business of the courts' within the meaning of 28 U.S.C. 372 (c)(1)." Obviously, to use the non-conforming and fraudulent disposition of my prior complaint as a basis for dismissing my current complaint would compound the injury done to me by the earlier order.

Additionally, my instant complaint is based on on-going judicial misconduct committed subsequent to that alleged in my earlier complaint, and was occasioned by new evidence in the November 7, 1999 Pensacola News-journal, as to the depth of the closeness that exists between the powerful, chief counsel for the defendant in my case and Judge Collier. To deny me the right to disciplinary review of subsequent allegations of further judicial misconduct and the new evidence substantiating the undisclosed relationships existing in the case, is, at very least, a violation of the spirit of the statute, if not the statute itself.

As to the Chief Judge's Dismissal Based on "Merits-Relatedness"

Judge Anderson dismisses this complaint in part on the ground that it is "directly related to the merits of a decision or procedural ruling." However, 28 U.S.C. Section 372 (c)(3)(A) does NOT mandate dismissal of a complaint on such a ground—a fact evident from the discretionary language of that section, which reads:

- (3) After expeditiously reviewing a complaint, the chief Judge, by written order stating his reasons, MAY—
 - (A) dismiss the complaint, if he finds it to be. . . (ii) directly related to the merits of a decision or procedural ruling, . . . (emphasis added)

Since 28 U.S.C. Section 372 (c)(3)(A)(ii) is *discretionary*, compliance with the recommendation that dismissal orders be reasoned and non-conclusory required the Order to specify the basis for such discretionary exercise. This is wholly absent from the Order.

Moreover, as is highlighted at page 95 of the article "*Without Merit: The Empty Promise of Judicial Discipline*," The Long Term View, Massachusetts School of Law, Vol. 4, No. 1 (summer 1997), biased judicial conduct motivated by improper purpose, such as that alleged in my judicial misconduct complaint, is not "merits-related."

In failing to provide a statement of the allegations of the complaint and the reasons for his disposition, Judge Anderson has left me in the dark regarding the basis on which he concluded that allegations such as Judge Collier's use of his judicial office to obtain special treatment for his friend, *ex parte* communications, failure to disclose, failure to disqualify, aiding and abetting, and acceptance of the perpetration of fraud on the court fall within the purview of merits-relatedness. In addition, it is exceedingly difficult for me to understand how the steering of my case from one judge to another could be considered merits-related. The conduct complained of in the complaint clearly stemmed from, and was alleged to have stemmed from, Judge Collier's failure to respect and to abide by the rules which govern his conduct, particularly with respect to his duty to have disclosed his relationship with the counsel for the defendant and to have disqualified himself when there were known facts bearing upon the appearance of bias or prejudice pursuant to 28 U.S.C. Section 455.

**THE CHIEF JUDGE'S DISMISSAL ORDER IS BASED IN PART ON A NON-
STATUTORY GROUND FOR DISMISSAL**

Review must also be granted because the additional or alternative ground for dismissal of the complaint, that the allegations are "successive," is a ground not authorized by 28 U.S.C. Section 372(c). Although Addendum III, Rule 18(c) states that the "Chief Judge shall dismiss as successive any complaint of judicial misconduct that was the subject of a complaint that the Chief Judge previously disposed of under [Addendum Three] rules," the statutory authority it cites is a global reference to subdivisions (1)(2)(3) of Section 372(c). Examination of those subdivisions does not specify such a ground for dismissal.

CONCLUSION

Chief Judge Anderson's conclusory, non-conforming dismissal Order makes manifest that my fact-specific judicial misconduct complaint has not been thoughtfully and fairly considered. Indeed, it calls into question the very integrity and credibility of this Circuit's implementation of Section 372(c). For the foregoing reasons, I petition the Judicial Council for review of the Chief Judge's disposition of my complaint.

Respectfully submitted,



Alberta Davison
(334) 575-7544