

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 24 2023

CIRCUIT EXECUTIVE

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

11-22-90081

**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 1, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 20, 2022, and the petition for review filed by petitioner on August 16, 2022. 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

JUL 20 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90081

ORDER

An individual has filed a Complaint against a United States bankruptcy judge under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Background

The record shows that in 2015 a miscellaneous bankruptcy proceeding was opened upon Complainant's request for an involuntary Chapter 11 petition. In July 2015 a bankruptcy judge who is not the Subject Judge dismissed the proceeding with prejudice, and the proceeding was closed in December 2015. In March 2020 Complainant filed a motion to reopen the proceeding and to set aside the July 2015 order, and the case was reassigned to the Subject

Judge. In May 2020 the Subject Judge entered an order denying the motion to reopen.

After additional proceedings, two law firms and various individuals filed a motion for an order holding Complainant in contempt, arguing that, in violation of the court's orders, instructions, and rules, he had recorded a hearing in the action, transmitted the recording to a third party, and filed an unsanctioned transcript in other proceedings. The Subject Judge later entered an order deferring ruling on the contempt motion and other matters. In May 2022 the Subject Judge denied a motion Complainant had filed in which he alleged she was disqualified from deciding the contempt motion based on a conflict of interest. The Subject Judge also ordered that all other pending motions, except the contempt motion, were denied as moot. The contempt motion remains pending.

Complaint

Complainant alleges the Subject Judge violated a Federal Rule of Bankruptcy Procedure by not disqualifying herself from considering the contempt motion, and that the Subject Judge retaliated against him in an effort to subject him to "bogus penalties." Complainant asserts that the Subject Judge will be called as a witness in connection with a certain matter. He also alleges the Subject Judge showed favoritism to "white movants" who failed to comply with a certain state court order. He attached documents to his Complaint.

Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge retaliated against him, had a conflict of interest, was not impartial, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge