

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAY 05 2023

CIRCUIT EXECUTIVE

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

11-22-90117

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

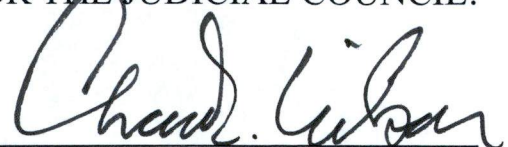
ON PETITION FOR REVIEW

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 August 22, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on October 3, 2022, and the petition for review filed by petitioner on November 21, 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

OCT 03 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90117

ORDER

An individual has filed a Complaint against a United States district 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 July 2021 Complainant filed a prisoner civil rights action against two defendants. He then filed a motion for leave to proceed *in forma pauperis*, which a magistrate judge granted. Complainant later filed an amended recast complaint, and the defendants moved to dismiss it. In April 2022, the magistrate judge issued a report recommending that the case be dismissed due to Complainant's failure to exhaust his administrative remedies.

Complainant then filed letters in which he, among other things, took issue with the actions of the defendants' attorney, objections to the report and recommendations, and motions seeking various types of relief. In June 2022, the Subject Judge entered an order adopting the magistrate judge's report and recommendation and dismissing the action for failure to exhaust administrative remedies. Complainant filed a notice of appeal.

Complaint

Complainant states that in April 2022 he sent the Subject Judge letters requesting that no order be issued until certain information was provided and asserting that the Subject Judge would rule against him no matter what evidence he provided, and he alleges the Subject Judge retaliated against him for sending those letters. Complainant states the Subject Judge knew that Complainant did not receive certain documents in a timely manner, and he alleges the Subject Judge showed favor to the defendants' attorney and allowed her "to spread corruption." Complainant then alleges the Subject Judge used his office to obtain special treatment for the defendants' attorney, treated Complainant in a demonstrably egregious and hostile manner, retaliated against him for participating the judicial complaint process, violated his due process and Eighth Amendment rights, and failed to give him sufficient time to respond to the report and recommendation.

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders in the above-described case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge retaliated against Complainant, showed favor to the defendants’ attorney, used his office to obtain special treatment for others, treated Complainant in a demonstrably

egregious and hostile manner, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge