

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAY 05 2023

CIRCUIT EXECUTIVE

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

11-22-90156

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

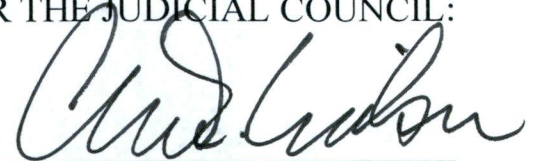
ON PETITION FOR REVIEW

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 November 1, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on November 22, 2022, and the petition for review filed by petitioner on December 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

NOV 22 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90156

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 September 2020 Complainant filed a “Petition for a Writ of Habeas Corpus” listing two different names for himself. In November 2020, Complainant filed a motion for injunctive relief. In February 2021, he filed a motion to withdraw the motion, a motion to amend his petition, and an amended petition, and the Subject Judge granted the motion to withdraw. In July 2021, the Subject Judge entered an order dismissing

Complainant's petition on the ground that federal courts should not interfere in pending state court proceedings.

Afterward, Complainant filed a notice of appeal, which was construed as a motion for a certificate of appealability, and a "Notice to Correct Form," requesting that the court "properly address him" in orders. In October 2021 the Subject Judge entered an order denying the Notice to Correct Form, finding the court had correctly identified Complainant using both of his names. The Subject Judge also issued an order finding Complainant was not entitled to a certificate of appealability. This Court later denied Complainant a certificate of appealability.

Complaint

Complainant alleges the Subject Judge failed to rule in a timely manner, asserting the length of time it took him to rule on his petition was "way above the average leng[th] of time that it would normally take another hearing officer to decide." He alleges the Subject Judge exhibited partiality and bias in his decisions, and he contends that the Subject Judge contradicted himself by stating the petition was filed under section 2254 of Title 28 of the United State Code when Complainant made it clear he was challenging "the legalities of [his] confinement." Complainant states the Subject Judge found that he failed to complete his state remedies, despite that he "clearly made [his] status as a sovereign known" and explained that he was "not subject to state remedies." He also asserts the Subject Judge denied him a certificate of appealability for "no good reasons."

Complainant contends he presented overwhelming evidence of his entitlement to relief, but the Subject Judge “failed in his duty to uphold the United States Constitution and laws, and in rendering justice accordingly.” Finally, Complainant states that the Subject Judge consistently referred to him using one name, although he made it clear he was “properly known” by another name, and he states the Subject Judge denied his motion pertaining to his name “based on false assumptions.”

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.

Furthermore, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

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, rulings, 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 was partial or biased 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