

AUG 14 2023

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-23-90007

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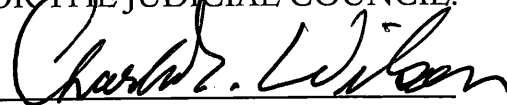
**ORDER**

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 the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. 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

FEB 14 2023

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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**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 June 2010 a federal grand jury issued a superseding indictment charging Complainant and two codefendants with multiple crimes. Following a trial, a jury found Complainant guilty as charged in the superseding indictment, and the Subject Judge sentenced him to a term of imprisonment in February 2011. This Court affirmed Complainant’s convictions. In January 2023, Complainant filed a motion that was docketed as a motion to amend or correct the judgment, and the next month, the

Subject Judge denied the motion on the ground that the judgment did not contain any clerical or other error.

### **Complaint**

Complainant alleges the Subject Judge engaged in misconduct “by the practice of wrongful, unconstitutional acts and omissions reflecting deliberate indifference to [Complainant] by failure to examine the superseding indictment.” He contends two counts in the indictment were constructively amended and that the indictment did not adequately provide him with notice of the specific charges. 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.

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 engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.  
Chief Judge