

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

AUG 15 2023

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-23-90093

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**ORDER**

An individual has filed a Complaint against a United States magistrate 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 2021 a federal grand jury returned an indictment charging Complainant with one crime, and Complainant moved to dismiss the indictment. A magistrate judge who is not the Subject Judge entered an order granting a motion for issuance of a subpoena to a certain company. The magistrate judge later issued a report recommending that Complainant's motion to dismiss the indictment be granted, and a district judge adopted the report and recommendation, granted the motion to dismiss, and dismissed the indictment without prejudice.

The record shows that in 2022 a federal grand jury returned another indictment charging Complainant with one crime. After various proceedings, the Subject Judge issued an order that granted Complainant's oral motion to continue an evidentiary hearing so that individuals from the company subpoenaed in the previous case could appear to testify. The Subject Judge then issued an order stating that written correspondence had been received from the company in response to subpoenas issued by Complainant and directing the clerk to docket the correspondence.

The Subject Judge also issued an order stating that the court previously had denied Complainant's request to subpoena the victim's records from the company, had stated that Complainant would be provided an additional opportunity to move for subpoena of those records, and had stated that the records would be produced to the court, not to Complainant directly, to enable compliance with the victim notification requirements of Federal Rule of Criminal Procedure 17(c)(3). The Subject Judge stated that the court had received from the company a letter and certain records pertaining to the victim, noted the letter stated the materials had been provided to Complainant, ordered Complainant not to access, review, or disseminate any such records, and directed the clerk to file the correspondence and records under seal. There continues to be activity in the case.

### **Complaint**

Complainant alleges the Subject Judge engaged in misconduct that undermined public confidence in the integrity and

impartiality of the judiciary, created a strong appearance of impropriety, and violated the Code of Conduct for United States Judges. He alleges the Subject Judge failed to report to the chief district judge that the magistrate judge in his first criminal case engaged in and concealed improper *ex parte* communications with the company involved in his cases.

Complainant states that the company informed him that a letter was sent to the magistrate judge informing the court that certain records were in the possession of law enforcement. He identifies the alleged *ex parte* communication as a 2021 letter from the company to the magistrate judge pertaining to the first criminal case, which stated that the company had complied with a certain subpoena, that certain records were no longer available, and that records that may have been requested by a law enforcement agency should be pursued by contacting the agency directly. Complainant asserts that the magistrate judge knew that upon receiving the unauthorized *ex parte* communication, she had a duty to notify the parties and grant each an opportunity to respond.

Complainant then states that he raised the issue with the Subject Judge in his second criminal case, but that no action was taken and there was “no proof on the record that she reported or disclosed” the *ex parte* communication to the chief district judge. He contends that the failure to disclose the communication helped the prosecution suppress evidence helpful to him, and that the Subject Judge deprived him of his “due process right to question witnesses helpful to his defense,” which “confirms her bias and lack of

impartiality.” Finally, he requests that the complaint proceeding be transferred to the judicial council of another circuit.<sup>1</sup> He attached documents to his Complaint.

### **Discussion**

The Complaint fails to present a basis for a finding of misconduct. Complainant’s claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or otherwise not impartial or that the Subject Judge engaged in judicial misconduct. Judicial-Conduct Rule 11(c)(1)(D). For that reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.  
Chief Judge

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<sup>1</sup> Complainant’s request to transfer the proceeding is **DENIED**.