

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL  
APR 25 2024  
CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-23-90132

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ORDER

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges; WALKER, Chief District Judge; COOGLER, District Judge

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.

Done this 25<sup>th</sup> day of April, 2024.

FOR THE JUDICIAL COUNCIL:

Charles Wilson  
United States Circuit Judge

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David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-23-90132

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**ORDER**

An attorney 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 two individuals, through Complainant, filed in state court a civil action against two defendants, and one defendant removed the action to federal court. Complainant later filed a motion to withdraw as counsel of record for the plaintiffs, and after he complied with an order directing him to deposit disputed attorneys' fees into the court's registry, the Subject Judge granted the motion to withdraw.

After additional proceedings, the Subject Judge issued an order setting a hearing for the next day, ordering Complainant to

attend the hearing by telephone, and directing the attorney for the plaintiffs to make sure Complainant received the order. Portions of the transcript of the hearing that Complainant provided show that the Subject Judge stated:

And, [Complainant], I asked you to join this hearing today because I think your conduct in this case is responsible for some of the confusion . . . .

[Complainant], I have reviewed the letter that you sent to the [plaintiffs] about your concern about a conflict of interest and your request that if the [plaintiffs] wanted you to continue to represent them, that they waive any conflict of interest and that they agree that you recover your full one-third fee and that any fee that [the defendant] wished to recover would be an issue for litigation or for other dispute resolution between the [plaintiffs] and [the defendant].

Interestingly enough, that letter postdates the filing of the declaratory judgment action in this case.

Can you explain that?

Complainant stated he had not looked at the details of the case for years and was not prepared to discuss the history of the lawsuits. The Subject Judge then stated she thought she remembered Complainant's representation to the court that he was holding a fee until all disputes about a settlement were resolved, and Complainant responded that he did not recall making that representation. The Subject Judge then said, "Well, I'm going to check on that. And,

[Complainant], I want you to know that I'm seriously considering referring this matter to the [ ] State Bar. And if I do, I'm also going to copy the Chief Judge of' a district court.

### **Complaint**

Complainant takes issue with the Subject Judge's order directing him to attend a hearing in less than 24 hours in a case in which he was not then involved. He also alleges the Subject Judge made "defamatory accusations" and "derogatory comments" about him at the hearing. He attached documents to his Complaint, including a letter he wrote to the Subject Judge in which he made a "formal demand for retraction of the defamatory accusations" made at the hearing.

### **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 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 made defamatory statements, 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