

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

11-22-90045

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

SEP 15 2022

CIRCUIT EXECUTIVE

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

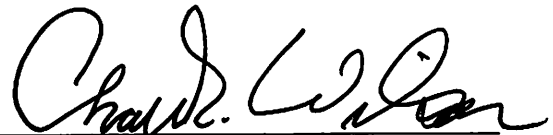
ON PETITION FOR REVIEW

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 March 31, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on May 13, 2022, and the petition for review filed by petitioner on June 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

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 19 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90045

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States District
Judge _____ of the United States District Court for the
_____ District of _____, under the Judicial Conduct and
Disability Act of 1980, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States District Judge _____ (“the Subject Judge”), un-
der the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct
and Judicial-Disability Proceedings of the Judicial Conference of
the United States (“Judicial-Conduct Rules”).

I. Background

A. Complainant's Case

The record shows that in January 2019 Complainant filed in state court an employment discrimination action against _____ (_____), and the next month, _____ removed the case to federal court and it was assigned to the Subject Judge. In May 2019 the case was referred to mediation, and the defendant later filed a notice that the mediator would be _____ and mediation would be held in October 2019. After the mediation conference, _____ issued a report noting that the parties had reached an impasse.

In November 2019 Complainant filed a Motion to Repeat Mediation, stating he had discovered that _____ was an equity partner in the law firm of _____ in 2014, when the firm represented _____ in another lawsuit. In March 2020 the Subject Judge entered an order denying the motion, finding (1) _____ served as an equity partner at _____ from May 2000 until December 2014; (2) she was no longer a member of the firm; (3) Complainant did not allege that she represented _____ in the 2014 action or had any significant relationship with _____; and (4) he failed to establish how her former role at the law firm compromised her impartiality or deprived him of a meaningful opportunity to resolve the matter. Complainant filed a motion for reconsideration, which the Subject Judge denied.

In May 2020 the Subject Judge issued an order granting a motion for summary judgment the defendant had filed.

Complainant appealed, and this Court later affirmed the Subject Judge's order.

B. Additional Background

In June 2019 an individual filed in state court a lawsuit against _____, and after the defendant removed the lawsuit to federal court, the Subject Judge was assigned to the case. (_____. v. _____). In August 2019 the case was referred to mediation, _____ was appointed as mediator, and counsel for the plaintiff filed a notice stating mediation had been rescheduled for July 2020 with _____. On February 20, 2020, counsel for the plaintiff filed an amended notice, stating mediation had been rescheduled for a different date in July 2020 with a different mediator. After additional proceedings, in February 2021 the Subject Judge dismissed the case with prejudice pursuant to the parties' Stipulation of Dismissal.

II. Allegations Relating to the Mediator

A. Complaint

Complainant alleges the Subject Judge used his office to provide special treatment for _____ and had improper *ex parte* communications with _____. Complainant contends _____ had a conflict of interest in his case because she had been a partner at a law firm that had represented _____.

Complainant then states that in November 2019 he filed a complaint against _____ "but never presented it to my attorney." He states that the applicable rules required a response to be

filed within 20 day of service of the complaint. Complainant then contends that the date of _____ response, March 12, 2020, showed that she was notified of the complaint on February 20, 2020. He states that February 20, 2020, “is very significant because [the Subject Judge] had to have communicated with _____ about my complaint when she received it from The Dispute Resolution Committee.” He states that, “[i]ronically,” on the same date, the Subject Judge removed _____ as the mediator in the _____ case.

Complainant asserts the Subject Judge engaged in misconduct by communicating with _____ about Complainant’s complaint “based on his actions of removing _____ from his _____ case prior to the committee making their final decision about my complaint and notifying the court.” Complainant alleges that the Subject Judge “was bias[ed] at this point and unable to remain impartial therefore [his case against _____] was prejudiced.” He also states, “I believe [the Subject Judge] performed his judicial duties with bias and prejudice because of his working relationship with _____,” stating _____ “has been listed on many of” the Subject Judge’s cases from 2014 until 2022.

Complainant attached a document showing that _____ was an equity partner in _____ from May 2000 through December 2014 and was “of counsel” with the firm from January 2014 through December 2016. He also provided a November 2019 complaint he filed against _____ with a state Dispute Resolution Center, generally alleging she had a conflict of interest in his

mediation with _____ due to her previous employment with _____. Complainant provided _____ March 2020 response to the grievance, and a document stating that a mediator shall file a response within 20 days of receipt of a complaint.

B. Subject Judge's Response

Judicial-Conduct Rule 11(a) requires the Chief Judge to review complaints of judicial misconduct or disability and determine what actions should be taken on them. Judicial-Conduct Rule 11(b) states in part, "In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with . . . the subject judge" *See also* 28 U.S.C. § 352(a). In conducting the limited inquiry, the Chief Judge "must not determine any reasonably disputed issue." Judicial-Conduct Rule 11(b).

As part of a limited inquiry, I asked the Subject Judge to respond to the allegations in the Complaint. In response, the Subject Judge stated that he did not remove _____ as the mediator in the _____ case, and the fact that local counsel selected _____ as mediator in many cases was not evidence that he knew _____ or was biased against Complainant.

C. 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, and orders denying the Motion to Repeat Mediation and motion for reconsideration in Complainant’s above-described case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims relating to _____ are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge used his office to obtain special treatment for _____, engaged in improper *ex parte* communications, was biased or prejudiced, or otherwise engaged in misconduct in Complainant’s case.

III. Allegations Relating to Financial Interests

A. Complaint

Complainant contends that the Subject Judge's Financial Disclosure Reports from 2014 to 2019 reveal that he violated rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure. Complainant first states, "His method of financial reporting was not an error or mistake but a pattern of listing stock symbols only and not the actual company names which hinders a conflict of interest from being detected immediately."

Complainant then alleges the Subject Judge adjudicated cases while owning stocks in companies that were parties, and he cites multiple cases in support of his allegation. He also states that the Subject Judge's 2019 Financial Disclosure Report lists _____ and _____, which were "two of the top institutional shareholders of _____," and he contends the Subject Judge therefore had a conflict of interest in his case against _____. He states the Subject Judge was assigned eight other cases involving _____ in 2019.

Complainant attached to his Complaint what purport to be the Subject Judge's Financial Disclosure Reports from 2014, 2015, and 2019. He also attached a document dated February 2022 stating that _____ is an institutional owner of _____, and a document stating that _____ and _____ each held a certain percentage of _____ stock.

B. Subject Judge's Response

The Subject Judge responds that the stocks listed on his Financial Disclosure Reports were owned by a separate entity and were part of a deferred compensation fund created before he left private practice. He notes he does not have the ability to direct which shares or bonds are purchased and sold. He also states that he communicated with the Chief of the Judges Compensation and Retirement Division and that it is clear he was not obligated to disclose shares held by the deferred compensation fund.

C. Discussion

Judicial-Conduct Rule 4(a)(1)(F) states that cognizable misconduct includes “violating rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure.”

Canon 3C of the *Codes of Conduct for United States Judges* provides in part:

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which:

(c) the judge knows that the judge, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding,

or any other interest that could be affected substantially by the outcome of the proceeding;

(3) For the purposes of this section:

(c) “financial interest” means ownership of a legal or equitable interest, however small, . . . except that:

(i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund[.]

Guide to Judiciary Policy, Vol. 2A, Ch. 2, Canon 3C.

Section 455(b)(4) of Title 28 of the United States Code states that a judge of the United States shall disqualify himself when he knows that he “has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.” “Financial interest” means “ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party.” 28 U.S.C. § 455(d)(4).

As an initial matter, the Subject Judge did not engage in misconduct by listing stock ticker symbols instead of full company

names on his Financial Disclosure Reports. *See* Judiciary Financial Disclosure Regulations, *Guide to Judiciary Policy*, Vol. 2D, Ch. 3 § 315.30(a)(1) (“Commonly used market abbreviations and tickers are permitted.”).

In addition, Complainant has not shown that the Subject Judge had a conflict of interest or improperly presided over cases while holding stock in one of the parties, as the stocks were held in a deferred compensation fund, the Subject Judge did not have the ability to direct the purchase or sale of the account’s holdings, and he was not required to list the stocks on his Financial Disclosure Reports. *See id.*, Vol. 2A, Ch. 2, Canon 3C(3)(c)(i); *see also id.*, Vol. 2B, Ch. 2, Advisory Opinion No. 106: Mutual or Common Investment Funds (stating in part that determining whether a fund qualifies for the safe harbor contemplated under Canon 3C(3)(c)(i) involves several factors, including “the ability of participants to direct their investments.”).

To the extent Complainant’s claims concern the Subject Judge’s financial interests, the claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge had a conflict of interest or otherwise engaged in misconduct.

IV. Conclusion

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has

occurred or that a disability exists,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge