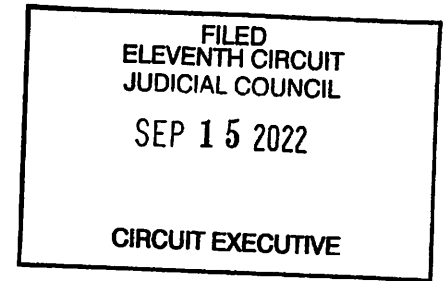


**FOR THE JUDICIAL COUNCIL  
OF THE ELEVENTH CIRCUIT**

**11-22-90059**



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

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ON PETITION FOR REVIEW


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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 April 25, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on June 14, 2022, and the petition for review filed by petitioner on June 27, 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

JUN 14 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-22-90059

IN THE MATTER OF A COMPLAINT FILED BY:

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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.

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**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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of the supplemental statements is permitted. *See* 11th Cir. JCDR 6.7.

### **Background**

The record shows that in November 2015 a federal grand jury issued an indictment charging Complainant with one count of being a felon in possession of a firearm. Following a trial, the jury found Complainant guilty as charged. At a sentencing hearing in March 2017, counsel for Complainant objected to the probation office's determination that he qualified as an armed career criminal under the Armed Career Criminal Act (ACCA). At sentencing the next day, the Subject Judge overruled Complainant's objections to the application of the guidelines and sentenced him to a term of 293 months of imprisonment. Complainant appealed, and this Court later affirmed his conviction and sentence, holding in part that he had the requisite predicate offenses to qualify as an armed career criminal.

The record shows that in March 2021 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising multiple claims of ineffective assistance of counsel, including that counsel was ineffective for failing to challenge the defective indictment. After the government filed a response in opposition, the Subject Judge entered an order denying the § 2255 motion, generally finding Complainant did not establish he was entitled to relief on his claims. Complainant did not file a notice of appeal.

The record also shows that in July 2021 Complainant filed a document that was docketed as a § 2255 motion in which he argued, among other things, that his prior convictions did not qualify as predicate offenses under the ACCA and that the Subject Judge sentenced him vindictively. After the government responded in opposition, in March 2022 the Subject Judge denied the construed § 2255 motion as an unauthorized second or successive § 2255 motion and alternatively found that Complainant's arguments were meritless.

### **Complaint**

Complainant first alleges the Subject Judge allowed his criminal case to proceed despite the absence of a properly signed arrest warrant or search warrant and without a "legal affidavit report" showing he was charged with possession of a firearm, and he states the Subject Judge did not give a jury instruction on his "lawful affirmative defense." He contends that, at sentencing, the Subject Judge improperly determined two of his past convictions qualified as predicate offenses under the ACCA and that his objections were overruled "without lawful justification." Complainant then states that the Subject Judge wrote an article in which she defamed and humiliated him "with libel defamation of character" by including fabricated statements that Complainant had a decades-long history of sexual and physical violence involving, in one instance, a four-year-old child and had reached for his firearm before complying with demands.

Next, Complainant contends the Subject Judge denied his § 2255 motion “without following rules and procedures,” which violated his due process rights. He asserts that the government never responded to his first § 2255 motion, which he states also violated his due process rights, and he complains the Subject Judge denied his construed second or successive § 2255 motion when no response had been filed to his initial § 2255 motion. Complainant attached documents to his Complaint, including a March 2017 release from the Department of Justice noting that the Subject Judge had sentenced him as an armed career criminal and describing the Subject Judge’s statements at sentencing as to his “decades-long history of sexual and physical violence.”

### **Supplements**

In the first supplemental statement, Complainant contends the Subject Judge improperly used two of his prior convictions to sentence him beyond the statutory maximum, when she knew it was inappropriate to do so as those convictions were not charged in the indictment or proven to a jury beyond a reasonable doubt. He also alleges that a certain statute is unconstitutional. He then alleges that the Subject Judge acted vindictively, was biased, and committed “libel defamation of character.” He attached documents to his first supplement.

In the second supplement, Complainant generally contends that he objected at sentencing to the determination that he was an armed career criminal. He alleges the Subject Judge acted with bias, did not afford him due process in considering his prior convictions,

complained about how long arguments were taking at sentencing, and failed to “acknowledge rules of the law.” He attached portions of the sentencing transcript to his second supplement.

### **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, rulings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject

Judge acted with an illicit or improper motive, was biased, sentenced him vindictively, defamed him, fabricated facts, or otherwise engaged in misconduct.

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