

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 03 2023

CIRCUIT EXECUTIVE

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

11-22-90063

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

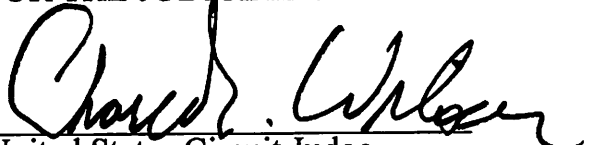
ON PETITION FOR REVIEW

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 April 29, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on June 15, 2022, and the petition for review filed by petitioner on July 25, 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 15 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90063

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States Magistrate 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 Magistrate Judge _____ (“the Subject Judge”), under 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 a supplemental statement. The filing of the supplemental statement is permitted. *See* 11th Cir. JCDR 6.7.

Background

The record shows that in January 2022 Complainant filed a *pro se* “Complaint for Criminal and Civil Damages” against the “United States Government” and multiple individuals, raising claims pertaining to certain medical care he received. The next month, he filed a motion seeking an order directing the defendants to “respond to summons.” In March 2022 the Subject Judge denied the motion, stating Complainant failed to demonstrate compliance with Fed. R. Civ. P. 4(i), his motion did not comply with a local rule, and that although he was proceeding *pro se*, the court expected him to be familiar with the rules. Also in March 2022 the United States filed a motion to dismiss the complaint, and Complainant filed two motions for summary judgment.

In late March 2022, Complainant filed a “Notice of Violation of Conflict of Interest” in which he alleged the Subject Judge should recuse himself because he was “a former employee of the defendant Attorney General’s Office” and because the Subject Judge’s statement that he expected Complainant to be familiar with the rules as a *pro se* litigant showed he was prejudiced against *pro se* litigants. The Subject Judge entered an order construing the filing as a motion to recuse and denying the motion. The Subject Judge stated he previously was employed as _____ and “would not have been assigned or consulted on anything related to

[Complainant's] medical treatment," and could not have participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion on the merits of the case in controversy.

In May 2022 Complainant filed a "Notice of Violation Due Process of Law" in which he alleged that the Subject Judge violated his due process rights, withheld filings from him, was biased against him because was proceeding *pro se*, disregarded "all rules of court," ignored that a defendant failed to timely file an answer, disregarded his disability, and refused to follow proper procedures so the government "can win a case and discredit [him] by keeping him in the dark on all filings." The Subject Judge entered an order noting that, according to the docket, all orders had been mailed to Complainant at his address on file, directing the clerk's office to provide him with a docket sheet on request so he could determine if he was missing any documents, and denying the motion "as to all else." The order also noted that Complainant's motion did not contain a certificate in compliance with a local rule and warned him that any future failure to comply with that rule would result in immediate denial of the motion. The Subject Judge also entered an order denying Complainant's motions for summary judgment without prejudice.

Complaint

Complainant alleges the Subject Judge engaged in misconduct by failing to recuse from the case, ruling on the recusal motion when the district judge should have ruled on it, allowing him to be

“treated in hostile and egregious contempt by the Attorney General Office,” intentionally discriminating against him because he was proceeding *pro se*, retaliating against him in rulings, and ignoring “certain laws or precedents.” He also alleges the Subject Judge had a conflict of interest because one of the defendants was his former employer. Complainant then alleges that the Attorney General’s Office harassed him, intimidated him, and engaged in improper *ex parte* communications with him. He states the Subject Judge failed “to justify proceeding” when he was never notified that the Attorney General’s Office filed a motion to dismiss and failed to respond to Complainant’s filings in a timely manner. He attached documents to his Complaint.

Supplement

In his supplemental statement, Complainant alleges the Subject Judge is biased and prejudiced against him because he is a *pro se* litigant and violated his due process rights by, among other things, failing to provide him with filings, which required him to go to the courthouse and pay for the filings. He states the Subject Judge “demonstrated a total disregard for all rules of court,” ignored that a defendant failed to timely file documents, disregarded Complainant’s disabilities, and “deliberately refused to follow proper procedure so the US Government can win a case and discredit [his] criminal charges by keeping him in the dark on all filings.”

Next, Complainant alleges the Subject Judge covered up that the defendants committed crimes by forging documents with the

intent to engage in fraud, and the Subject Judge “operated in concert with his former colleagues” to cover up the criminal acts, “which ma[d]e him a party to the crime.” He requests that the Subject Judge be held in contempt and be removed from the bench.

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 case, 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 was biased or prejudiced, discriminated or retaliated against Complainant, had a conflict of interest, covered up crimes, was part of a conspiracy, 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