

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

**11-22-90072**

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

JAN 24 2023

CIRCUIT EXECUTIVE

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

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ON PETITION FOR REVIEW

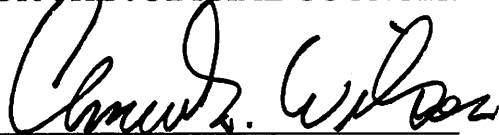
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Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;  
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on May 13, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 12, 2022, and the petition for review filed by petitioner on August 19, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

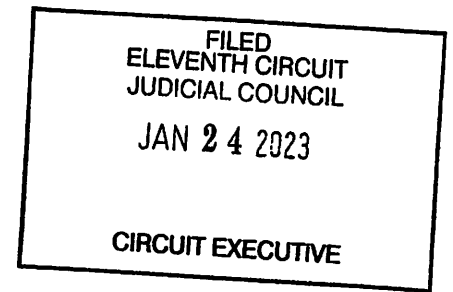
The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

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

**11-22-90073**



**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 May 13, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 12, 2022, and the petition for review filed by petitioner on August 19, 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

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

**11-22-90074**

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

JAN 24 2023

CIRCUIT EXECUTIVE

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

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ON PETITION FOR REVIEW

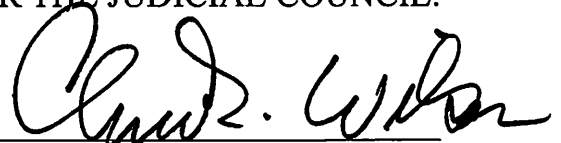
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Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;  
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on May 13, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 12, 2022, and the petition for review filed by petitioner on August 19, 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

JUL 12 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint Nos. 11-22-90072 through 11-22-90074

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 \_\_\_\_\_ and United States Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ of the United States Court of Appeals for the \_\_\_\_\_ Circuit, 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 \_\_\_\_\_ and United States Circuit Judges \_\_\_\_\_ and \_\_\_\_\_ (collectively, “the Subject Judges”), 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”).

### **Background**

The record shows that in May 2004 a federal grand jury issued an indictment charging Complainant with two counts of coercion or enticement of a minor. After various proceedings, in April 2006 Complainant filed a motion *in limine* to exclude evidence that he had traveled to \_\_\_\_\_ several years earlier to engage in sexual activity with a minor or “young man,” and Judge \_\_\_\_\_ later denied the motion. In October 2006 a fourth superseding indictment was issued, charging Complainant on seven counts. The case proceeded to trial, and in May 2007 a jury found Complainant guilty of 3 counts of sexual exploitation of a minor, 2 counts of receiving child pornography, and 1 count of possessing child pornography. In September 2007 Judge \_\_\_\_\_ sentenced Complainant to a total term of 420 months of imprisonment.

Complainant appealed, and in June 2009 this Court affirmed his convictions and sentences. This Court held in part that the district court’s finding that Complainant had a history of abuse was supported by the fact that, although it may have been legal activity in \_\_\_\_\_, Complainant’s main objective while there was to have sex with boys under the age of eighteen. This Court also noted that the district court stated that the guideline range was not adequate because the defendant in \_\_\_\_\_ received a ten-year sentence for traveling across state lines once to have sex with a minor, and that the district court failed to articulate why Complainant’s guideline

range was disproportionately low compared to the sentence in \_\_\_\_\_. But this Court held that Complainant's reliance on the sentences summarized in another case was misplaced because none of the sentences was for production of child pornography.

In January 2011 Complainant filed a motion to vacate, set aside, or correct sentence, 28 U.S.C. § 2255, raising 21 grounds for relief, including grounds alleging that his convictions and sentences were unlawful because they were based on his private, legal, homosexual sexual conduct in \_\_\_\_\_ years before his arrest, and that his convictions and sentences resulted from an unfair trial presided over by a district judge who advocated for the government and was biased against him. In December 2011 a magistrate judge issued a report recommending that Complainant's motion be denied, finding that he could not relitigate matters that had been decided against him on direct appeal, that various claims had been procedurally defaulted, and that his claims of ineffective assistance of counsel failed. Over Complainant's objections, in March 2012 Judge \_\_\_\_\_ entered an order adopting the report and recommendation and denying Complainant's motion. Complainant appealed, and this Court denied his motion for a certificate of appealability (COA).

After additional proceedings in the district court, in October 2018 Complainant filed a motion to void the judgment in the § 2255 proceeding under Federal Rule of Civil Procedure 60(b)(4). He also filed two motions to recuse Judge \_\_\_\_\_, alleging in part that recusal was required because Judge \_\_\_\_\_ had a "homophobic

predisposition and homophobic sentencing scheme.” Judge \_\_\_\_\_ entered an order denying the initial motion to recuse pursuant to the extrajudicial source doctrine, finding all of the allegations were based on his rulings. Complainant then filed, among other things, a motion for reconsideration of the order denying the motion to recuse and an amended motion to void the judgment pursuant to Rule 60(b)(4).

In May 2020 Judge \_\_\_\_\_ entered an order that, in part, denied the second motion to recuse for the reasons set forth in previous orders denying motions for recusal and because the issue of recusal was moot, that denied the motion for reconsideration, that denied the amended Rule 60(b)(4) motion, and that denied Complainant a COA. Complainant then filed two motions to alter, amend, or vacate Judge \_\_\_\_\_ order, which Judge \_\_\_\_\_ dismissed or denied.

Complainant filed a notice of appeal as to Judge \_\_\_\_\_ orders, and he stated he was also appealing the orders denying the recusal motions and that no COA was required to appeal those orders. He then filed a motion for a COA in this Court. In August 2021 Judge \_\_\_\_\_ issued an order denying Complainant’s motion for a COA because he failed to make a substantial showing of the denial of a constitutional right.

Complainant filed a motion for reconsideration in which he argued in part that his challenge to the orders denying recusal did not require a COA. In September 2021 a two-judge panel composed of Judges \_\_\_\_\_ and \_\_\_\_\_ entered an order denying

the motion for reconsideration because Complainant offered no new evidence or arguments of merit to warrant relief. After additional proceedings, in April 2022 Judges \_\_\_\_\_ and \_\_\_\_\_ entered an order directing the clerk's office to take no action on any further filings in the closed appeal.

### **Complaint**

Complainant alleges Judge \_\_\_\_\_ had a "personal and pervasive bias" against him and engaged in "abject discrimination" based on Complainant's decision "to engage in lawful, private, homosexual-sexual conduct" in \_\_\_\_\_ with men over the age of 16 prior to his arrest. Complainant contends Judge \_\_\_\_\_ "exposed a deep-seated homophobic bias" during his sentencing hearing when he compared Complainant's legal sexual activity to the attempted rape of a female toddler in the \_\_\_\_\_ case, opined that his "lawful gay sex was more condemnable, by comparison," and substantially increased his prison term above the guideline range based on his comparison and opinion. Complainant states he was never convicted for conduct that involved illicit sexual acts. He asserts that Judge \_\_\_\_\_ "was so disgusted about my lawful gay sex . . . that he injected his biased predisposition directly into the parity analysis," which "translate[d] into flagrant discrimination based on my sexual orientation." Complainant then contends that in Judge \_\_\_\_\_ order denying the motion to recuse in the Rule 60(b)(4) proceedings, he ignored Supreme Court precedent on recusal stemming from bias or discriminatory animus.



Next, Complainant states that he specifically identified the orders denying recusal in his notice of appeal and argued that a COA is not required to appeal a recusal order in collateral proceedings. He states that, given the “unambiguous legal backdrop” and the “overwhelming case law” holding that a COA is not required to appeal from recusal orders issued in collateral proceedings, he had “no choice but to conclude that Judges \_\_\_\_\_ and \_\_\_\_\_ are determined to perpetuate Judge \_\_\_\_\_ discrimination on the basis of my sexual orientation.”

Complainant states that Judge \_\_\_\_\_ denied him a COA with respect to the Rule 60(b)(4) claims without referencing his appeal from the recusal order and that Judges \_\_\_\_\_ and \_\_\_\_\_ denied his motion for reconsideration, again without referencing his appeal of the recusal order. He contends he was “not allowed” to appeal Judge \_\_\_\_\_ recusal orders despite doing everything under the law to compel such review, and that Judges \_\_\_\_\_ and \_\_\_\_\_ “refused to accept non-discretionary jurisdiction” of his appeal of Judge \_\_\_\_\_ orders. He asserts it is clear that Judges \_\_\_\_\_ and \_\_\_\_\_ are intentionally discriminating against him “because of the particular issue to be reviewed: Judge \_\_\_\_\_ determination to make sure I spend the rest of my life in prison based on my lawful gay sex” in another country. He attached documents to his Complaint.

### **Previous Judicial Complaint**

In December 2011 Complainant filed a judicial complaint against Judge \_\_\_\_\_, No. \_\_\_\_\_. In that complaint,

Complainant alleged that Judge \_\_\_\_\_ had a “homophobic agenda,” which was revealed when he allowed the government to present the jurors with evidence of Complainant’s “legal, private, homosexual sexual conduct” in \_\_\_\_\_. Complainant also alleged that Judge \_\_\_\_\_ improperly enhanced his sentence based on the homosexual activity in \_\_\_\_\_, as shown by Judge \_\_\_\_\_ alleged determination that Complainant’s conduct was more egregious than that of a defendant in another case, “who was on his way to rape a four-year old toddler of the opposite sex.” Complainant also contended that Judge \_\_\_\_\_ made various statements at the sentencing hearing that showed he had a “homosexual bias.”

In January 2012 Complaint No. \_\_\_\_\_ was dismissed as merits-related or based on allegations lacking sufficient evidence. Complainant filed a petition for review, and in May 2012 the Judicial Council Review Panel affirmed the dismissal of the complaint.

### **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.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those allegations and address only any allegations that have not previously been considered. *See* JCDR 11(c)(2).

To the extent Complainant alleges that Judge \_\_\_\_\_ acted with an illicit or improper motive or was biased against Complainant at sentencing, those allegations have previously been considered in connection with Complaint No. \_\_\_\_\_. To the extent Complainant's allegations concern the substance of Judge \_\_\_\_\_ orders denying his motions to recuse and Rule 60(b) motion, Judge \_\_\_\_\_ order denying him a COA, and Judges \_\_\_\_\_ and \_\_\_\_\_ order denying his motion for reconsideration, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, were biased against Complainant, discriminated against him, 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