

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL

JAN 24 2023

CIRCUIT EXECUTIVE

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

**11-22-90088**

**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 June 27, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on July 25, 2022, and the petition for review filed by petitioner on August 5, 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 25 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-22-90088

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**ORDER**

An individual has filed a Complaint against a United States magistrate 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.

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 April 2022 Complainant filed a petition for writ of habeas corpus, 28 U.S.C. § 2241, and an application for leave to proceed *in forma pauperis* (IFP). The Subject Judge then entered an order referring to Complainant as a “serial pro se litigant” and directing him to complete and return certain court

forms. In June 2022 the Subject Judge entered an order denying the IFP application, stating that although Complainant's filings in the case asserted that he had no money, he recently submitted an IFP application in another case that showed he had \$40 in his account, which demonstrated that he was able to pay the \$5 filing fee.

The record also shows that in June 2022 Complainant filed a prisoner civil rights action against three defendants and an IFP application. The next month, the Subject Judge issued a report recommending that the case be dismissed without prejudice due to Complainant's failure to fully disclose his prior litigation history and granting the IFP application solely for the purpose of dismissal.

### **Complaint**

Complainant alleges the Subject Judge had a conflict of interest in his habeas case because she dismissed two previous habeas petitions he filed that raised the same claims. Complainant states the Subject Judge referred to him as a "serial litigant," which was "nefarious terminology" synonymous with "serial rapist" or "serial killer." He then alleges the Subject Judge violated various canons of the Code of Conduct for United States Judges.

### **Supplement**

In his supplemental statement, Complainant contends the Subject Judge's order denying his IFP motion was "another v[e]iled tactic" that violated the Code of Conduct and "set[] the stage" for her to "wrongfully dismiss" his case "on baseless and frivolous grounds." Complainant notes the Subject Judge was assigned to the

second above-described case, which was his fourth case to which she was assigned. Complainant states the Subject Judge should be disqualified from that case because, in the first above-described case, she accused him of making false statements and misleading the court in his IFP motion, acted in bad faith, defamed him, “continued racial harassment systemically,” and wrongfully dismissed his previous cases.

Complainant asserts that it is “mathematically impossible” for the Subject Judge to be randomly assigned to his four cases, and that it is “more likely logical” that she is taking action to be assigned to his cases to further implement “this racial agenda.” He states the Subject Judge is intentionally avoiding the merits of his cases, knowingly caused an “undue delay of justice,” and acted to “cover up a conflict of interest in order to advance a racist agenda.” He attached documents to his 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, rulings, findings, orders, and report and recommendations 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, violated the Code of Conduct for United States Judges, was not impartial, had a conflict of interest, 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