

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAY 05 2023

CIRCUIT EXECUTIVE

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

11-22-90100

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

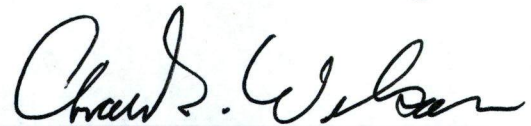
ON PETITION FOR REVIEW

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 August 16, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on September 7, 2022, and the petition for review filed by petitioner on October 11, 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

SEP 07 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90100

ORDER

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

Background

The record shows that in June 2021 a company filed a lawsuit against Complainant and other defendants, raising claims of, among others, trademark counterfeiting and infringement. The plaintiff then filed a time-sensitive motion to file certain documents under seal, which the Subject Judge granted. The plaintiff also filed an *ex parte* motion for a temporary restraining order and for an order restraining the transfer of assets against the defendants. The next day, the Subject Judge entered a temporary restraining order.

A few days later, the Subject Judge entered an order unsealing documents because she had ruled on the motion for a temporary restraining order.

The plaintiff then filed a motion for a preliminary injunction. In July 2021 Complainant filed an answer and counterclaim against the plaintiff. A magistrate judge issued a report recommending that the plaintiff's motion for a preliminary injunction be granted. Complainant then filed various motions, including a motion to disqualify, and the Subject Judge denied some of those motions for failure to comply with a local rule requiring parties to confer. Complainant continued to file motions seeking various types of relief.

In September 2021 the Subject Judge entered an order adopting the magistrate judge's report and recommendation and granted the plaintiff's motion for a preliminary injunction as to certain defendants and denied the motion as moot as to Complainant's business. In February 2022 the Subject Judge entered an order denying multiple motions Complainant filed without prejudice because he had filed a notice of appeal. After this Court dismissed Complainant's appeal for lack of jurisdiction, he filed in the district court additional motions seeking various types of relief. In May 2022 the plaintiff filed a motion to voluntarily dismiss its complaint against Complainant without prejudice.

In July 2022 the Subject Judge issued multiple orders that, among other things, denied numerous motions Complainant had filed, granted the plaintiff's motion to voluntarily dismiss its claim

against Complainant, and granted a motion to dismiss Complainant's counterclaim. In one order, the Subject Judge noted that certain motions contained insufficient certifications required by a local rule, despite the court's "repeated warnings" to Complainant about the importance of complying with the rule. The Subject Judge also found Complainant made a misrepresentation in one of his filings, which was "an intentional, bad faith act," but declined to sanction him for his "vexatious litigation tactics." Complainant filed a notice of appeal and an amended counterclaim, and the Subject Judge dismissed the amended counterclaim.

Complaint

Complainant asserts that the Subject Judge "developed a pejorative predisposition of favoritism toward the plaintiff and failed to exercise the court's inherent duty to dismiss the shotgun complaint that also contained fraud." He then contends that the Subject Judge lacked subject-matter jurisdiction in the case, acted outside the scope of her authority in taking various actions including by referring certain matters to a magistrate judge, disregarded a statute and local rules concerning sealed filings, allowed the plaintiff to make the defendants' confidential records public, improperly granted the plaintiff's *ex parte* application for a temporary restraining order, failed or refused to comply with provisions of 15 U.S.C. § 1116 on injunctive relief, violated her oath of office, denied defendants' motions for failure to comply with a local rule while repeatedly permitting the plaintiff to file motions that did not comply with local rules, arbitrarily and capriciously applied the local rule

to help the plaintiff, granted motions filed by the plaintiff without giving the defendants an opportunity to respond, improperly allowed the plaintiff to respond to a motion to recuse, issued clearly erroneous orders, and violated his constitutional rights.

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the above-described case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural

rulings. Judicial-Conduct Rule 11(c)(1)(B). 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, violated her oath of office, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge