

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

11-22-90116

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAY 05 2023

CIRCUIT EXECUTIVE

**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 22, 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 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

SEP 07 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90116

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.

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, among other things, a motion for a preliminary injunction. In July 2021 Complainant filed an answer to the complaint and a counterclaim.

At the end of a hearing on the preliminary-injunction motion, the Subject Judge stated to counsel for the plaintiff, “And so I

think that would be helpful to the Court if you provide that with a new proposed report and recommendation.” In July 2021 the Subject Judge issued a report recommending that the plaintiff’s motion for a preliminary injunction be granted. In September 2021 the district judge entered an order adopting the 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 May 2022 the plaintiff filed a motion to voluntarily dismiss its complaint against Complainant without prejudice. The district court then denied several 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. Complainant filed a notice of appeal and an amended counterclaim, and the district judge dismissed the amended counterclaim.

Complaint

Complainant asserts the Subject Judge “developed a pejorative predisposition of favoritism towards 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 district judge did not have the authority to refer matters pertaining to the motion for a preliminary injunction to the Subject Judge, and he asserts the Subject Judge rescheduled hearings without giving the defendants proper notice. Complainant also alleges the Subject Judge “permitted the plaintiff to prepare his report and recommendation by”

including fraudulent misrepresentations, acted outside of his authority in issuing the report, assisted the plaintiff in abusing the judicial process and committing fraud, and violated the defendants' 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, orders, and reports 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, assisted the plaintiff in abusing the judicial process or committing fraud, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.

Chief Judge