

AUG 14 2023

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90044 and 11-23-90045

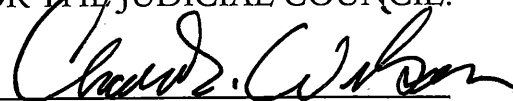
ORDER

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 the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. 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

MAY 02 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90044 and 11-23-90045

ORDER

An individual has filed a Complaint against a United States district judge and 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 2022 Complainant filed a *pro se* civil action against multiple defendants, and he later filed a motion for a default judgment. The defendants then filed a motion to dismiss the complaint. After additional filings, the Subject Magistrate Judge issued a report recommending in part that Complainant's motion for default be denied because he had not obtained a clerk's default and failed to obtain service of process for each defendant, and recommending that the defendants' motion to dismiss be granted on

the ground that the complaint failed to state a claim on which relief could be granted.

Over Complainant's objections, the Subject District Judge entered an order adopting the report and recommendations and dismissing the case without prejudice. Complainant filed a motion for reconsideration, which the Subject District Judge denied. He then filed an objection to the denial of his motion for reconsideration and moved for the Subject District Judge's disqualification. The Subject District Judge denied the objection, construed as a renewed motion for reconsideration, and found no basis for recusal or disqualification.

Complaint

Complainant contends that the Subject Judges engaged in conduct reasonably likely to result in a substantial and widespread lowering of public confidence in integrity, impartiality, and functioning of the Judiciary. He asserts the Subject Judges violated his civil, due-process, and equal-protection rights, violated the Code of Conduct for United States Judges, disregarded the Federal Rules of Civil Procedure, ignored rules and laws applicable to court proceedings, allowed the defendants to ignore rules and laws, helped and advocated for the defendants, issued rulings before the defendants responded to motions or objections, allowed the defendants not to answer the complaint, deprived him of his right to a trial by jury, violated their oaths of office, conspired with the defendants and others to deprive him of his rights, "went along with the lies and fraud to help cover up retaliation and harassment," and

demonstrated they cannot be impartial. Complainant alleges the Subject Magistrate Judge “never rendered a Rule 16 as required by” the federal rules, “never ordered Plaintiff to re-do the Service of process as required by rules and law,” took more than nine months to issue a report and recommendation, “bunched all the pending motions and requests together” in the report without giving him the “time and rights to address those decisions separately,” and issued a report “based on lies, deceit and fraud.” Complainant asserts the Subject District Judge ignored his oath of office because Complainant was proceeding *pro se*. He states it appears the Subject District Judge “has a personal Interest in the company or parties that are being sued and a personal bias against” him. He attached documents to his 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, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, rulings, findings, report, and orders in the above-referenced case, the allegations are directly related to the merits of the Subject Judges’ 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 Judges engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge