

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

OCT 03 2023

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90086

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

JUL 03 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90086

ORDER

An individual has filed a Complaint against a United States circuit 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 2005 Complainant filed a petition for a writ of habeas corpus, 28 U.S.C. § 2254, challenging certain state-court convictions. After various proceedings, the Subject Judge, who was then a district judge, adopted a magistrate judge’s report and recommendation and denied Complainant’s habeas petition. On appeal, this Court affirmed.

The record also shows that in 2022 Complainant filed in the district court another habeas petition challenging the same state-

court convictions. A district judge entered an order dismissing the case for lack of jurisdiction, determining the petition was an unauthorized second or successive petition. Complainant appealed and filed in the appeal a motion for leave to proceed *in forma pauperis* and a motion for the appointment of counsel. The Subject Judge entered an order denying the motions because Complainant had no potentially meritorious argument that the district court erred in dismissing the unauthorized second or successive habeas petition.

Complaint

Complainant alleges the Subject Judge knew or should have known that his participation in the above-described appeal created a conflict of interest because he had been the presiding district judge in Complainant's earlier habeas proceeding challenging his state-court convictions. Complainant asserts the Subject Judge should have recused himself from the appeal to avoid the appearance of bias and prejudice, as it would be reasonable to conclude that a judge would not question his prior decision. He also alleges the Subject Judge's participation in the appeal called into question his "integrity, competency, veracity, independence, and impartiality." Finally, Complainant states the Subject Judge purposely ignored "equitable matters" he presented, and engaged in "cronyism with the district judge in favor of rigid adherence" to the law on successive habeas petitions.

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 order in the above-described appeal, 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 engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge