

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

AUG 15 2023

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-23-90095

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**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 2021 a federal grand jury returned an indictment charging Complainant with one crime, and Complainant moved to dismiss the indictment. A magistrate judge entered an order granting a motion for issuance of a subpoena to a certain company. The magistrate judge later issued a report recommending that Complainant's motion to dismiss the indictment be granted, and a district judge who is not the Subject Judge adopted the report and recommendation, granted the motion to dismiss, and dismissed the indictment without prejudice.

The record shows that in 2022 a federal grand jury returned another indictment charging Complainant with one crime. After various proceedings, a magistrate judge issued an order that granted Complainant's oral motion to continue an evidentiary hearing so that individuals from the company subpoenaed in the previous case could appear to testify. The magistrate judge then issued an order stating that written correspondence had been received from the company in response to subpoenas issued by Complainant and directing the clerk to docket the correspondence.

At one point in the case, Complainant filed a notice of appeal as to a magistrate judge's order declining to accept a *pro se* filing because Complainant was represented by counsel. The government filed in the district court a motion to stay the proceedings in the light of Complainant's appeal, and the Subject Judge denied the motion to stay. The order was docketed in Complainant's appeal. This Court later dismissed the appeal as moot. There continues to be activity in the district court.

### **Complaint**

Complainant alleges the Subject Judge engaged in misconduct that undermined public confidence in the integrity and impartiality of the judiciary, created a strong appearance of impropriety, and violated the Code of Conduct for United States Judges. He alleges the Subject Judge failed to report to the chief circuit judge that the magistrate judge in his first criminal case engaged in and concealed improper *ex parte* communications with the company involved in his cases.

Complainant states that the company informed him that a letter was sent to the magistrate judge informing the court that certain records were in the possession of law enforcement. He identifies the alleged *ex parte* communication as a 2021 letter from the company to the magistrate judge pertaining to the first criminal case, which stated that the company had complied with a certain subpoena, that certain records were no longer available, and that records that may have been requested by a law enforcement agency should be pursued by contacting the agency directly. Complainant asserts that the magistrate judge knew that upon receiving the unauthorized *ex parte* communication, she had a duty to notify the parties and grant each an opportunity to respond.

Complainant then states that he raised the issue with the Subject Judge in his second criminal case, but that no action was taken and there was “no proof on the record that she reported or disclosed” the *ex parte* communication to the chief circuit judge. He contends that the failure to disclose the communication helped the prosecution suppress evidence helpful to him, and that the Subject Judge deprived him of his “due process right to question witnesses helpful to his defense,” which “confirms her bias and lack of impartiality.” He also alleges the Subject Judge entered the order denying the government’s motion to stay “in an attempt to use her position on [the] Judicial Council to influence the Complainant’s appeal.” Finally, he requests that the complaint proceeding be transferred

to the judicial council of another circuit.<sup>1</sup> 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.

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 denying the government’s motion to stay, 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

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<sup>1</sup> Complainant’s request to transfer the proceeding is **DENIED**.

to raise an inference that the Subject Judge failed to call to the attention of the chief circuit judge reliable information reasonably likely to constitute judicial misconduct, was biased or otherwise not impartial, 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