

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

JAN 03 2024

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90101 and 11-23-90102

ORDER

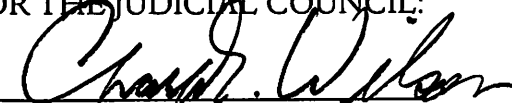
Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges; COOGLER and WALKER, Chief District Judges.

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.

Done this 3rd day of January, 2024.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

SEP 05 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

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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 2021 a company filed a lawsuit against multiple defendants, raising claims of trademark counterfeiting and infringement. The plaintiff filed an *ex parte* motion for a temporary restraining order and for an order restraining the transfer of assets against the defendants. The Subject District Judge entered a temporary restraining order.

The plaintiff later filed a motion for a preliminary injunction. After various proceedings, an individual defendant filed an answer to the complaint and asserted a counterclaim against the plaintiff for falsely asserting that an item he had sold was counterfeit or infringing. At the end of a hearing on the preliminary-injunction motion, the Subject Magistrate Judge asked counsel for the plaintiff to provide an updated proposed order and stated, “And so I think that would be helpful to the Court if you provide that with a new proposed report and recommendation.”

The Subject Magistrate Judge then issued a report recommending that the plaintiff’s motion for a preliminary injunction be granted. The defendant then filed various motions, and the Subject District Judge denied certain motions for failure to comply with a local rule requiring parties to confer. The Subject District Judge also entered multiple orders extending the temporary restraining order. The plaintiff filed a notice withdrawing its motion for a preliminary injunction as to the individual defendant. The Subject District Judge then entered an order adopting the Subject Magistrate Judge’s report and recommendation, granting the plaintiff’s motion for a preliminary injunction as to certain defendants, and denying the motion as moot as to the individual defendant’s business.

Afterward, the individual defendant and Complainant filed a cross-claim against multiple parties, an amended cross-claim, and multiple motions. The plaintiff filed a motion to voluntarily dismiss its complaint against the individual defendant without prejudice. After additional proceedings, the Subject District Judge issued

multiple orders that, among other things, denied numerous motions the defendant had filed, granted the plaintiff's motion to voluntarily dismiss its claim against the defendant, granted a motion to dismiss the defendant's counterclaim, and struck Complainant and the defendant's cross-claim and amended cross-claim. Complainant and the defendant have continued to file motions in the case.

Complaint

Complainant takes issue with the Subject Judges' findings, rulings, and orders in the above-described case, and she alleges the Subject Judges acted without jurisdiction, abused the judicial process, made unsupported rulings, violated her due process rights, failed to provide proper notice, ignored arguments because she was proceeding *pro se*, and committed crimes. Complainant alleges that the plaintiff's attorney has a "close personal friendship with" the Subject District Judge and "authored an article on her personal profile," and she contends the Subject District Judge took actions in the case as a personal favor for her friend and to help further the plaintiff's unlawful "scheme." Complainant states that the Subject District Judge denied or dismissed multiple motions filed by the defendant for failure to comply with a certain local rule, but allowed the plaintiff to file numerous motions that did not comply with that rule as a favor to her friend.

Next, Complainant contends the Subject Magistrate Judge "conducted a preliminary injunction hearing which amounted to unlawful *ex parte* communication because [Complainant] was

never given notice or opportunity to be heard despite the repeated ‘hollow order’ for plaintiff to effect service.” She alleges the Subject Magistrate Judge acted without jurisdiction and violated canons of ethics by instructing the plaintiff’s counsel to prepare a report and recommendation. She also contends the report contained fraudulent misrepresentations, and that the Subject Magistrate Judge signed the fraudulent pleading to aid the plaintiff’s unlawful scheme. Complainant states the Subject Magistrate Judge failed to conduct an independent review of the record and relief on fraudulent statements made by the plaintiff’s counsel. She further alleges the Subject Magistrate Judge made false statements, was biased and prejudiced against her, and repeatedly denied her and the defendant notice and an opportunity to be heard. Finally, she raises allegations against individuals other than the Subject Judges.

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 Judges’ official actions, rulings, findings, reports, recommendations, and orders in the above-described 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 acted with an illicit or improper motive, were not impartial, used their office to obtain special treatment for friends, acted to assist the defendants, engaged in improper *ex parte* communications, committed crimes, 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