



CONFIDENTIAL

Before the Judicial Council of the  
Eleventh Judicial Circuit

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Judicial Complaint Nos. 11-23-90120 through 11-23-90122

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**ORDER**

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

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 7<sup>th</sup> day of May, 2024.

FOR THE JUDICIAL COUNCIL:

/s/ Robin S. Rosenbaum  
United States Circuit Judge

OCT 16 2023

David J. Smith  
Clerk

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**ORDER**

An individual has filed a Complaint against three United States circuit judges 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 a federal grand jury issued an indictment charging Complainant with two crimes. Complainant filed a motion *in limine* to exclude evidence that he previously had traveled to another country to engage in sexual activity with a minor or “young man,” and the district judge denied the motion. After a fourth superseding indictment was issued, the case proceeded to trial, and a jury found Complainant guilty on multiple counts involving child pornography. The district judge later sentenced

Complainant to a term of imprisonment. On appeal, this Court affirmed Complainant's convictions and sentences.

After various additional proceedings, Complainant filed in the district court a motion for a sentence reduction pursuant to the First Step Act. He also filed a motion to recuse the district judge, alleging the judge had an extrajudicial and pervasive bias against him shown by the judge's statements and findings during the sentencing hearing. The district judge entered an order denying the motion for a sentence reduction on the ground that Complainant was not eligible for a reduction. The order also denied the motion to recuse based on a finding that Complainant's supporting arguments previously had been rejected by the court.

On appeal, a panel of this Court composed of the Subject Judges granted a motion for summary affirmance the government had filed, determining that Complainant was not eligible for a sentence reduction. The panel also determined that Complainant's argument about recusal was frivolous because there was no evidence of pervasive bias or prejudice and because he mischaracterized as homophobic the district judge's statements at sentencing. Complainant filed a petition for panel rehearing and rehearing en banc and a motion to recuse the Subject Judges, and the Subject Judges denied the petition and motion.

### **Complaint**

Complainant alleges the Subject Judges acted with an improper motive in the above-described appeal by knowingly adopting the false premise that he had engaged in sexual abuse in another

country, using the false premise to determine the district judge did not have a homophobic bias, ignoring binding precedent in the process, and ultimately preventing him from obtaining relief from an impartial tribunal. Complainant contends the Subject Judges knew the false premise that he engaged in sexual abuse in another country was based on a clear error of law committed by a prior panel in his direct appeal, and he complains that the Subject Judges refused to correct the prior panel's error.

Complainant states the district judge is a "professional colleague" of the Subject Judges, that the Subject Judges' ruling proves they acted with an improper motive to "unjustly protect" the judge's reputation and "the illusion" of the judge's impartiality, and that they exhibited "unbridled and unjust favoritism towards their colleague." Complainant also alleges that one of the Subject Judges previously had rejected his request to appeal from the district judge's order denying recusal in a post-conviction proceeding, which established that the Subject Judge had a "personal interest in unlawfully preserving [the district judge's] reputation." 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 Judges’ official actions, order, and opinion on appeal, 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, acted to protect another judge, were not impartial, had a conflict of interest, 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