

OCT 12 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90124

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 June 2022, Complainant filed a prisoner civil rights action against multiple defendants and a motion for leave to proceed *in forma pauperis*. The next month, a magistrate judge issued a report recommending that the case be dismissed due to Complainant’s failure to disclose his full litigation history, and the magistrate judge granted the motion to proceed *in forma pauperis* solely for the purpose of dismissing the case.

On July 26, 2022, the Subject Judge entered an order stating no objections to the report and recommendation had been filed, adopting the report and recommendation, and dismissing the case without prejudice. The district court's docket sheet shows that Complainant filed objections to the report and recommendation on July 25, 2022, but they were not entered on the docket until July 27, 2022.

Complaint

Complainant states that since late 2020, the Subject Judge has dismissed five separate civil actions Complainant filed "on meritless grounds." With respect to the above-described case, Complainant states the Subject Judge dismissed the case due to his failure to file objections to the report and recommendation, when he had timely filed the objections but they were not submitted until after the Subject Judge had adopted the report and recommendation.

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. All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). For this reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge