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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90135

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 a former political office holder filed a motion seeking, among other things, the appointment of a special master and to enjoin the government from reviewing certain seized materials. The Subject Judge entered an order providing notice of the court's preliminary intent to appoint a special mater in the case, and later that month, the government filed a response in opposition to the plaintiff's motion. After a hearing, the Subject Judge issued an order granting the plaintiff's motion in part,

authorizing the appointment of a special master to review the seized materials, and temporarily enjoining the government from reviewing and using the seized materials for certain purposes.

The government filed a notice of appeal and a motion for a partial stay pending appeal, and the Subject Judge entered orders denying the motion for a partial stay and appointing the special master. The government also filed in this Court a motion for a partial stay pending appeal, and this Court later granted the motion.

Afterward, the special master issued an Amended Case Management Plan directing the parties to take various actions by certain deadlines, and the plaintiff filed objections to the amended plan. The Subject Judge then issued an order accepting in part and rejecting in part the amended plan, finding the order appointing the special master did not contemplate certain aspects of the plan, and extending certain deadlines.

Complaint

Complainant alleges the Subject Judge had a “political bias,” made a “partisan attempt to impede” an investigation into the plaintiff, used her office to obtain special treatment for the plaintiff, violated her oath of office, and may have engaged in obstruction of justice. Complainant contends that the Subject Judge’s order appointing the special master and temporarily enjoining the government from reviewing and using seized materials was “unprecedented” and “so legally dubious,” he states that “numerous legal specialists” noted the decision showed “unusual solicitude” to the

plaintiff, and he cites statements from three law professors otherwise criticizing the decision. Complainant also states that the Subject Judge “[u]nusually” entered a tentative order before the government had an opportunity to respond.

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 official actions, rulings, findings, and orders in the above-described case, 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 was politically biased, used her office to obtain special treatment for the plaintiff, violated her oath of office, obstructed justice, 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