

NOV 10 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90140

ORDER

An individual has filed a Complaint against 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 October 2021, Complainant filed a prisoner civil-rights action against a defendant, and after various proceedings, he filed a second amended complaint. In April 2022, the defendant filed a motion to dismiss the complaint. Afterward, Complainant filed, among other things, a motion to expedite issuance of a report and recommendation, and in August 2022, the Subject Judge denied the motion but noted that the court would consider the motion to dismiss as expeditiously as possible.

Complainant then filed motions for issuance of a subpoena, to expedite issuance of a scheduling order, and for leave to amend his complaint. In October 2022, the Subject Judge entered an order denying Complainant’s motion for leave to amend because of undue delay and denying the remaining two motions as premature. Later that month, the district judge entered an order granting the defendant’s motion to dismiss.

Complaint

Complainant states that the Subject Judge elected not to order the clerk to issue him a subpoena, refused to issue a scheduling order as required by Federal Rule of Civil Procedure 16(b), and failed to act on his motion to amend his complaint despite that justice required that the court grant him such leave.

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.

Furthermore, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

The Complaint fails to present a basis for a finding of misconduct. All of Complainant’s allegation concerns the substance of the Subject Judge’s official actions, findings, and orders in the above-described case, 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 that reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge