

MAR 27 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90032

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 October 2020 Complainant filed an employment-discrimination lawsuit against one defendant. In August 2021, a district judge who is not the Subject Judge issued an order dismissing the case with prejudice as frivolous. The district judge also imposed a prefiling injunction on Complainant given his “incessant and frivolous litigation.” On appeal, this Court affirmed the dismissal of Complainant’s action.

The record shows that in March 2022 Complainant sued the United States, under the Federal Tort Claims Act, and alleged that he had been improperly banned from a healthcare facility. He then filed multiple motions seeking various types of relief, and the district judge from the above-described case entered orders denying the motions. In August 2022, the Subject Judge granted a motion to dismiss the suit and ruled that Complainant violated the prefiling injunction issued in the earlier case. The Subject Judge also modified the prefiling injunction to clarify its scope.

The record also shows that in July 2022 Complainant filed a lawsuit against two defendants raising allegations stemming from his “ban” from a medical facility. He also filed a motion to disqualify the Subject Judge. In August 2022, the Subject Judge dismissed the case with prejudice and directed the clerk to terminate any pending motions. The Subject Judge ruled that the action was an “attempted end run” of the prefiling injunction. On appeal, this Court ruled that the district court abused its discretion in dismissing the complaint because it did not fall within the scope of the initial prefiling injunction and was filed before the prefiling injunction was modified. This Court vacated the dismissal and remanded for further proceedings.

Complaint

Complainant alleges that the Subject Judge issued an order modifying the earlier prefiling injunction in a case that was not assigned to him. Complainant then contends that the Subject Judge modified the injunction so he could dismiss the third case, but that

it “backfired” when this Court ruled that he abused his discretion. Finally, Complainant alleges that the Subject Judge violated a federal law governing judicial disqualification, 28 U.S.C. § 455, and he asserts that the Subject Judge must disqualify himself on remand because he has personal knowledge of disputed evidentiary facts and could be called as a witness in the case. Complainant 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 Judge's official actions, rulings, findings, and orders in the second and third above-described cases, 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 improperly acted in a case not assigned to him, acted with an illicit or improper motive, 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