

MAY 15 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90057

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 2022 Complainant filed a “Motion for a Stay Pending Appeal” that named multiple defendants and included various documents. The same day, a Clerk’s Notice was entered on the docket instructing Complainant to pay the filing fee within 24 hours. A few days later, the Subject Judge issued an order stating Complainant initiated the case without paying the filing fee or filing a motion to proceed *in forma pauperis*, stating the Clerk had notified Complainant of the deficiency and advised him to pay the

fee within 24 hours, and directing Complainant to either pay the fee or file an *in forma pauperis* motion before a certain date.

After that date, Complainant filed a motion in which he argued the Subject Judge should have recused himself because he was under investigation by this Court and the United States Attorney General's Office, that the Subject Judge lied under oath by stating Complainant had been notified of his failure to pay the fee, and that he had submitted an *in forma pauperis* motion with the case-initiation documents. The Subject Judge then entered an order dismissing the case without prejudice due to Complainant's failure to pay the fees or to file an *in forma pauperis* motion. The Subject Judge noted that he had carefully reviewed the docket and concluded that no *in forma pauperis* motion had been filed. Complainant later filed a motion for an investigation and a motion for a stay pending appeal, both of which the Subject Judge denied.

Complaint

Complainant contends the Subject Judge should have recused himself from the case because he is under investigation by this Court and the United States Attorney General. He also alleges the Subject Judge lied under oath by stating Complainant was notified of his failure to pay the fee and to file an *in forma pauperis* motion, and he asserts that he submitted an *in forma pauperis* motion with the case-initiation documents and that the Subject Judge had no intention to find the truth or to afford him "his day in court." 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 Judge’s official actions, rulings, findings, and orders in the 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 lied 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