

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

DEC 08 2023

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90087 and 11-23-90088

ORDER

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges; COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

JUL 19 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90087 and 11-23-90088

ORDER

An individual has filed a Complaint against a United States magistrate judge and 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 document that was docketed as a complaint for mandamus relief. The Subject Magistrate Judge issued a report recommending the case be dismissed without prejudice on the ground that the court lacked authority to issue a writ of mandamus to a state court. The report also noted that Complainant had not paid the filing fee or moved to proceed *in forma pauperis*, and directed that, if he objected to the report, he must also either pay the fee or file an *in forma pauperis*

motion. The Subject District Judge later adopted the report and dismissed the case without prejudice because Complainant failed to pay the filing fee or submit an application to proceed *in forma pauperis*.

The record shows that in 2022 Complainant filed three prisoner civil-rights complaints in which he stated that he had not filed any other federal lawsuits while incarcerated, and in one case, he also filed an affidavit and authorization for withdrawal from his inmate account. The Subject Magistrate Judge issued in each case a report recommending that the case be dismissed without prejudice on the ground that Complainant “lied about his litigation history,” noting that his response that he had not filed any other lawsuits while incarcerated was plainly false because he had filed the previous lawsuit.

The record also shows that in 2023 Complainant filed three additional prisoner civil-rights complaints. In each of the cases, the Subject Magistrate Judge issued a report denying Complainant leave to proceed *in forma pauperis* and recommending the case be dismissed without prejudice. The Subject Magistrate Judge stated that Complainant had not paid the filing fees or filed applications for permission to proceed *in forma pauperis* in any of the three cases, on three or more occasions he had brought an action or appeal while incarcerated that was dismissed as frivolous, as malicious, or for failure to state a claim, he had not alleged he was in imminent danger of serious physical injury, and therefore, his cases should be

dismissed without prejudice. Complainant filed objections to the reports and recommendations.

Complaint

Complainant alleges the Subject Magistrate Judge committed “malicious perjury” in the most recent report by stating that his initial case had been dismissed for failure to state a claim, when the case had been dismissed for failure to pay the filing fee or to file a motion to proceed *in forma pauperis*. He states that, in the initial case, the Subject Magistrate Judge “wrongfully construed” a one-page letter as a lawsuit even though he never filed an official prisoner civil-rights complaint form. Complainant contends the Subject Magistrate Judge “again committed blatant perjury” by stating that Complainant did not pay the fees or file motions to proceed *in forma pauperis* in his cases, which he filed such motions with his earlier civil actions. Complainant further alleges the Subject Magistrate Judge made false and misleading statements by finding that, on three or more prior occasions, he brought an action or appeal that was dismissed as frivolous, as malicious, or for failure to state a claim, when his three prior cases were dismissed without prejudice. He contends the Subject Magistrate Judge “blatantly violated her judicial oath of office by committing perjury,” and was part of a conspiracy to prevent him from proceeding *in forma pauperis*. He does not appear to raise any specific allegations concerning the Subject District Judge. 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 Magistrate Judge’s official actions, rulings, findings, reports, and recommendations in the above-described cases, the allegations are directly related to the merits of the Subject Magistrate 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 Magistrate Judge acted with an illicit or improper motive, lied or committed perjury, violated her oath of office, or was

part of a conspiracy, or that either of the Subject Judges 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