

SEP 08 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90103

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 federal grand jury returned an indictment charging Complainant with multiple crimes. A judge who is not the Subject Judge entered an order recusing all of the district judges in the district from consideration of the matter. A judge from another district then was designated to sit as the presiding district judge in the case. A jury later convicted Complainant on certain counts, and he was sentenced to a term of imprisonment.

The record shows that the Subject Judge later was assigned to and issued orders on multiple motions to vacate, set aside, or

correct sentence, 28 U.S.C. § 2255, that Complainant had filed stemming from the criminal case. In one case, the Subject Judge denied a motion in which Complainant argued the Subject Judge should recuse himself based on the recusal order issued in the criminal case. Among other things, the Subject Judge found that Complainant had forfeited his argument that the recusal order remained in effect and required the Subject Judge's recusal, and that, in any event, the recusal order did not apply to the Subject Judge.

Complaint

Complainant alleges the Subject Judge “simply ignored a standing order of recusal” that had been “validated” by this Court, and presided over Complainant's post-conviction proceedings despite that he was recused based on the standing order issued in the criminal case. He states his Complaint is not about whether the Subject Judge should have recused himself from the proceedings, but “whether he violated a standing order of recusal and in contempt of that Court Order, presided over the matters discussed,” in violation of Complainant's “constitutional right to Due Process of Law with deliberate indifference.” 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 Complainant’s cases, including his failure to recuse, 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 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