

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAY 05 2023

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-22-90099

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW

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 petitioner's complaint filed on August 15, 2022, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on September 1, 2022, and the petition for review filed by petitioner on September 12, 2022. 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

SEP 01 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90099

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. He then filed multiple motions seeking various types of relief, and the defendant filed a motion to dismiss. In August 2021 a district judge who is not the Subject Judge entered an order granting the motion to dismiss and dismissing the action with prejudice as frivolous. The district judge also imposed a prefiling injunction on

Complainant given his “incessant and frivolous litigation.” Complainant filed a notice of appeal.

The record shows that in March 2022 Complainant filed a Federal Tort Claims Act action against the United States in which he alleged he had been improperly banned from a healthcare facility and that the ban was null and void. He then filed multiple motions seeking various types of relief, including a motion to disqualify the assigned judges and two motions for summary judgment, and the district judge from the above-described case entered orders denying the motions. The defendant filed a motion to dismiss the case. In August 2022 the Subject Judge issued an order granting the defendant’s motion to dismiss, finding Complainant’s claims violated prefiling injunction issued against him in the earlier case. The Subject Judge also modified the language of the prefiling injunction to clarify its scope going forward. Complainant filed a notice of appeal.

The record also shows that in April 2022 Complainant filed a civil rights action against multiple defendants, alleging he had been denied medical treatment because he had been banned from a medical facility, but that the ban was null and void. The Subject Judge then issued an order transferring the case to another district judge for all further proceedings pursuant to a local rule. The assigned district judge then issued several orders in the case. In August 2022 the defendants filed a motion to dismiss the case, and Complainant filed a response in opposition. Also in August 2022, the Subject Judge entered an order granting the defendants’ motion

to dismiss, finding that Complainant's claims violated the prefiling injunction. Complainant filed a motion for relief from judgment or order, which was stricken per the prior dismissal order. Complainant filed a notice of appeal.

Complaint

Complainant contends that the Subject Judge "dismissed two cases not assigned to him" in retaliation for Complainant filing a previous judicial misconduct complaint against him and for filing other lawsuits against individuals and a district judge that raised related issues. Complainant also states the Subject Judge "acted outside the performance of his official duties by modifying" the prefiling injunction issued by another 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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, 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. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge retaliated against Complainant, improperly acted in cases not assigned to him, or otherwise engaged in misconduct. *See Dietz v. Bouldin*, 136 S. Ct. 1885, 1891 (2016) (“[T]his Court has long recognized that a district court possesses inherent powers that are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” (quotation omitted)); *United States v. Stone*, 411 F.2d 597, 598-99 (5th Cir. 1969) (“District judges may by rule, order or consent transfer cases between themselves. Each judge of a multi-district court has the same power and authority as each other judge. Moreover, District Judges have the inherent power to transfer cases from one to another for the expeditious administration of justice.” (citations omitted)).

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 11(c)(1)(B), and the Complaint “is based on allegations lacking

sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge