

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 26 2023

CONFIDENTIAL

David J. Smith
Clerk

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90001

ORDER

An individual has filed a Complaint against a United States magistrate 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 May 2020 Complainant filed a prisoner civil rights complaint against two defendants and a motion for leave to proceed *in forma pauperis*. The Subject Judge later entered an order granting the *in forma pauperis* motion and directing Complainant to sign and return certain fee-related documents. Complainant then filed another motion for leave to proceed *in forma pauperis*.

In November 2022, the Subject Judge issued a report recommending that the complaint be dismissed and denying the second *in forma pauperis* motion as moot. In addition, the Subject Judge directed Complainant to pay the filing fee and directed the warden at his place of incarceration to set aside a percentage of future deposits into his account until the full filing fee had been paid. The Subject Judge then stated that any party could file objections to the report and recommendation within 14 days. Over Complainant's objections, a district judge adopted the Subject Judge's report and recommendation and dismissed the case without prejudice.

Complaint

Complainant asserts the Subject Judge did not inform him of his right to object to the “non-disposition order” directing the warden to set aside a percentage of deposits into his account. He also alleges the Subject Judge ordered that money be deducted from his inmate account without his authorization, which violated 18 U.S.C. § 241 and the Eighth Amendment.

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, orders, report, and recommendations in the above-described case, 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 violated a criminal statute, violated the Eighth Amendment, 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