

APR 19 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90042

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.

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of the supplemental statements is permitted. *See* 11th Cir. JCDR 6.7.

Background

The record shows that in 2022 Complainant filed a complaint against one defendant, and the defendant later filed a motion to dismiss. An attorney then entered a notice of appearance on behalf of Complainant. The Subject Judge entered an order allowing Complainant to file a counseled response to the defendant's

motion to dismiss by a certain date. After Complainant filed multiple *pro se* responses, the Subject Judge entered an order directing counsel to file by a certain date a notice confirming whether he still represented Complainant. Months later, counsel filed a response to the defendant's motion to dismiss. The Subject Judge then issued an opinion striking counsel's response as untimely and dismissing the complaint for lack of subject-matter jurisdiction.

Complaint

Complainant states that the Subject Judge's opinion "is not consistent with the Case Summary regarding" her former counsel, the "responses" in the opinion were biased, and the "inaccurate responses were purposely intended, due to [the Subject Judge] having to refer to the Dockets in the Case Summary before stating them" in the opinion. Complainant asserts that, according to the "Case Summary," the Subject Judge never requested that Complainant's counsel respond to the motion to dismiss by a certain deadline.

Supplement

Complainant's supplemental statement appears to be a copy of her previously submitted statement of facts along with copies of the docket sheet and the Subject Judge's opinion.

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, and opinion 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 was biased, 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