

MAY 15 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90058

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 establishes 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 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 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 was "inconsistent with the Case Summary regarding" her former counsel, the "responses" in the opinion were biased, and "falsification of facts was purposely intended." 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. She also states that the Subject Judge did not strike certain allegedly fraudulent exhibits and did not allow Complainant to submit a certain motion and emails as evidence.

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 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, falsified facts, 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