

MAY 30 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90064

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 lawsuit against two defendants regarding from his “ban” from a medical facility, and he moved to disqualify the Subject Judge. The Subject Judge later dismissed the case with prejudice and directed the clerk to terminate any pending motions. The Subject Judge found that the action was an “attempted end run” around pre-filing-injunctions issued in two other cases. On appeal, this Court vacated the dismissal and remanded for further proceedings because the complaint did not fall within the scope of the pre-filing injunction.

Afterward, the Subject Judge directed the clerk to reopen the case and to reinstate all motions pending when the case was closed, and the defendants filed a motion to dismiss. Complainant then filed an emergency motion to stay the proceedings pending the Subject Judge's disqualification from the case. The next month, the Subject Judge entered an order denying the motion to disqualify and an order granting the motion to dismiss.

Complaint

Complainant contends that the Subject Judge violated a federal statute, 28 U.S.C. § 455, by failing to recuse himself from the case and by deliberately delaying ruling on the motion to disqualify. He states the Subject Judge must disqualify himself on remand under section 455, Canon 3 of the Code of Conduct for United States Judges, and the Due Process Clause of the Fifth Amendment to the Constitution. 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 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 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