

AUG. 29 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-23-90100

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 2023 Complainant filed a petition for writ of habeas corpus, 28 U.S.C. § 2254, and a motion for leave to proceed *in forma pauperis*. A magistrate judge denied the *in forma pauperis* motion, finding Complainant had sufficient money in his account to pay the \$5.00 filing fee. Complainant filed a motion for reconsideration, arguing he had insufficient funds in his account and, in any event, he should not be required to pay the filing fee because he was being falsely imprisoned. The magistrate judge denied the motion, stating that Complainant could not simply deplete

his account to avoid paying the filing fee. Complainant filed a response in which he argued he could not pay the filing fee because he was being provided insufficient food at this place of incarceration, which required him to spend his money on food.

The Subject Judge then issued an order dismissing the case due to Complainant's failure to comply with a court order requiring him to pay the filing fee. The order stated that the record confirmed Complainant had sufficient funds to timely pay the filing fee and that his statement in his habeas petition that the food was "unappetizing" showed that he had access to a sufficient quantity of food and that he was "unwilling—not unable—to pay" the fee.

Complaint

Complainant alleges the Subject Judge violated multiple canons of the Code of Conduct for United States Judges by knowingly changing Complainant's allegations concerning food so he could determine that Complainant was unwilling, not unable, to pay the filing fee.

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 violated the Code of Conduct for United States Judges, knowingly changed Complainant’s allegations, 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