

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL
APR 25 2024
CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90137 and 11-23-90138

ORDER

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges; WALKER, Chief District Judge; and COOGLER, District Judge.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

Done this 25th day of April, 2024.

FOR THE JUDICIAL COUNCIL:

Charles Wilson
United States Circuit Judge

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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

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ORDER

An individual has filed a Complaint against a United States district judge and 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 2021 Complainant filed a petition for writ of habeas corpus, 28 U.S.C. § 2254, challenging certain state-court convictions, and he later filed an amended petition. The Subject Magistrate Judge issued a report recommending that the petition be denied. Over Complainant's objections, the Subject District Judge adopted the recommendation, and the case was dismissed. This Court dismissed Complainant's appeal for lack of jurisdiction. Afterward, Complainant filed a motion for relief from

judgment or order, Fed. R. Civ. P. 60(b), and the Subject District Judge denied the motion.

The record shows that in 2021 Complainant also filed a prisoner civil-rights action against multiple defendants. A defendant filed a motion to dismiss and a motion to stay discovery, and the Subject Magistrate Judge granted the motion to stay discovery. Complainant then filed an amended complaint. A defendant later filed a motion for extension of time to complete discovery and to take Complainant's deposition remotely, and the Subject District Judge denied the motion for an extension but granted the motion to take Complainant's deposition remotely. A defendant later filed a motion to file a motion for summary judgment out of time, and the Subject District Judge granted the motion. The case remains pending.

Complaint

Complainant contends that, in the first above-described case, the Subject District Judge's impartiality was placed into question when he ruled on the Rule 60(b) motion because granting the motion would require that he reverse his own decision. Complainant contends the Subject Judges should recuse themselves from the second case because they allowed a defendant to disobey the order staying discovery by granting the defendant's motion to take a deposition remotely. Complainant also takes issue with the order granting the defendant's motion to file a motion for summary judgment out of time, contending he was not given an opportunity to object and was unable to respond because he had not received any

discovery. Complainant states, “Multiple facts and evidence in both cases” show the Subject Judges have not been impartial and that “[a]buse of discretion, biasness, and prejudice” have been “clearly shown.”

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 Judges’ official actions, rulings, findings, reports, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judges’ 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 Judges acted with an illicit or improper motive, were biased or otherwise not impartial, 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