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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-24-90258 and 11-24-90259

ORDER

An individual has filed a Complaint against two United States circuit judges 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 Complainant filed a petition for writ of habeas corpus, 28 U.S.C. § 2254, challenging a certain state court conviction. After various proceedings, a district judge denied the petition. Complainant then filed, among other things, a motion to vacate all orders that had been entered in the case, and a district judge denied the motion. On appeal, one of the Subject Judges issued an order denying Complainant's motion for a certificate of appealability and denying other motions he had filed. Complainant

filed a motion for reconsideration, which a panel composed of the Subject Judges denied.

Complaint

Complainant appears to allege that the Subject Judges discriminated against him on the basis of his race, and he states the Subject Judges refused to provide him “the same services and access provided white persons,” ignored evidence, and “evaded” the review of his claim.

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 and orders in the above-referenced appeal, 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 discriminated against him 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