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David J. Smith
Clerk

CONFIDENTIAL

Before the Acting Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-24-90264 through 11-24-90267

ORDER

An individual has filed a Complaint against four 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 shows that Complainant filed a 28 U.S.C. § 2254 petition for writ of habeas corpus, challenging a certain state court conviction, and after various proceedings, a district judge denied the petition. On appeal, the Third Subject Judge issued an order denying Complainant's motion for a certificate of appealability and other motions he had filed. Complainant filed a motion for reconsideration, which a panel composed of the Third and Fourth Subject Judges denied.

Previous Complaints

Complainant filed a previous Complaint of Judicial Misconduct or Disability against the Third and Fourth Subject Judges pertaining to their actions in the above-described appeal. The Second Subject Judge dismissed that Complaint as merits-related and based on allegations lacking sufficient evidence to raise an inference that the subject judges engaged in misconduct.

Complainant then filed a Complaint of Judicial Misconduct or Disability against the Second, Third, and Fourth Subject Judges. The First Subject Judge dismissed that complaint on the same grounds.

Current Complaint

Complainant alleges that the Third and Fourth Subject Judges discriminated against him on the basis of his race, evaded his “obvious claim of double jeopardy, pursuant to a ‘catch and kill’ scheme,” and issued orders with a factual basis “knowingly inconsistent with the record.” He appears to allege that all of the Subject Judges were part of a conspiracy to cause him harm.

Complainant alleges the First and Second Subject Judges overlooked multiple allegations he made in his previous judicial complaints “without regard to the appearance of impropriety, with disregard for the truth, or the effective and expeditious administration of the business of the courts.” He alleges the First and Second Subject Judges ignored a certain standard “by excluding the actual acts of misconduct complaint of,” and he contends his allegations are not merits-related. Finally, he lists various examples of

misconduct and “cites at least” ten of the examples “as grounds for the complaints.” 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.

In addition, the “Commentary on Rule 4” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even

though it does not concern the judge's rulings in Article III litigation.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant's allegations concern the substance of the Third and Fourth Subject Judges' official actions and orders in the above-referenced appeal and the First and Second Subject Judges' orders dismissing the previous judicial complaints, 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, discriminated against him, or otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ Adalberto Jordan

Acting Chief Judge