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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-25-90185

ORDER

An individual has filed a Complaint against 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 establishes that Complainant filed a petition for writ of habeas corpus, 28 U.S.C. § 2254, challenging a state conviction. He moved to proceed *in forma pauperis*, and the Subject Judge entered an order granting the motion and directing the respondent to file the state-court record. Complainant also moved to stay the case pending receipt of a missing page from a DNA report. After the respondent filed a response in opposition, the Subject Judge entered an order denying the motion to stay. Complainant then filed

a motion for clarification and a motion to recuse the Subject Judge, and the Subject Judge denied the motions.

Complaint

Complainant contends the Subject Judge “departed from the essential requirements of law” when he issued an order directing the respondent to provide a complete record. He alleges the Subject Judge “fell short of doing his required due diligence” by denying Complainant’s motion to stay based on the respondent’s response, which “contained a multitude of errors.” He states the Subject Judge’s failure to conduct a factual investigation “created the appearance of impropriety” and that he believes the Subject Judge favors the respondent. Complainant states that another motion he filed was denied “despite clear and convincing evidence” that the respondent provided false evidence. He asserts that the Subject Judge “has been shown to have a judgment miscarriage with this decision making process, that would not be in [Complainant’s] favor.” 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, findings, rulings, 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, was 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