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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-25-90205

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 establishes that Complainant filed a civil complaint under the Federal Tort Claims Act, and the case was assigned to the Subject Judge. The defendant moved to dismiss the complaint. A district judge who is not the Subject Judge entered an order dismissing the complaint because it violated a prefiling injunction entered in another action. The order also modified the prefiling injunction. This Court affirmed.

Complaint

Complainant alleges the Subject Judge engaged in misconduct by failing to report that the judge who dismissed the above-described case committed fraud upon the court by changing the prefiling injunction. He also alleges the Subject Judge failed to disclose to the chief judge that she was not disqualified from the case and another case, that she and the other judge knew Complainant should not have been enjoined in the case, and that the other judge “interfered with her adjudicative responsibilities,” violated a local rule on the assignment of cases, and attempted to conceal the existence of a certain federal regulation.

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 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 committed misconduct by failing to report certain matters to the chief judge 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