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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-26-90119

ORDER

An attorney 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 an individual filed a civil complaint against multiple defendants who moved to dismiss it. The Subject Judge granted the motion to dismiss for lack of subject-matter jurisdiction. On appeal, this Court vacated and remanded because the district court erred in ruling that state law defined its subject-matter jurisdiction. The case remains pending.

The record also establishes that an individual, represented by Complainant, filed an employment-discrimination action against a company. In the complaint, the plaintiff alleged that his

alleged violation of a non-retaliation policy was a pretext for his firing. The defendant moved for summary judgment and objected to the plaintiff's assertion of new theories.

A magistrate judge recommended that the defendant's motion for summary judgment be granted. The magistrate judge also concluded that the plaintiff "asserted new theories—a conspiracy between multiple employees to cause [the plaintiff's] termination [and others]—that are nowhere to be found at prior points in the litigation." Over the plaintiff's objections, the Subject Judge adopted the recommendation. The order also overruled the objection to the magistrate judge's conclusion that the theory that several individuals "coordinated a scheme to conduct an investigation leading to the plaintiff's termination" was improperly raised for the first time at summary judgment.

Complaint

Complainant discusses a Judicial Council order finding that an unnamed judge—later revealed to be the Subject Judge—engaged in misconduct and imposing a private reprimand. He contends the findings "raise legitimate questions concerning chambers management, supervision of judicial employees, and the degree of personal attention devoted to judicial duties." He states the "concerns take on greater significance when viewed alongside rulings in multiple civil-rights cases assigned to [the Subject Judge] that appear to reflect unusual departures from basic procedural principles and that have generated substantial concern among litigants regarding whether meaningful judicial review occurred."

Complainant states that, in the first case, where the Subject Judge's dismissal was vacated on appeal, the plaintiff contends that additional rulings "improperly expanded the grounds for dismissal." Complainant contends that, in the second case, the Subject Judge "adopted a recommendation characterizing the plaintiff's evidence concerning the alleged sham investigation as a purported 'new theory' raised for the first time during summary judgment proceedings, notwithstanding that the complaint itself expressly alleged that the investigation was a sham and pretext for racial discrimination." Complainant contends that the decisions in the two cases, along with the Judicial Council's order, "raise a reasonable question whether some civil orders may not have received the level of independent judicial review, scrutiny, and deliberation expected of an Article III judge." He states the Judicial Council's findings "warrant further inquiry" into whether the Subject Judge engaged in misconduct and raise a "reasonable question" whether the Subject Judge suffers from a disability.

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 are the same as those addressed in the Judicial Council's order, those allegations have already been considered. Judicial-Conduct Rule 11(c)(2). To the extent Complainant's remaining allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the above-described cases, 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 did not properly review cases, suffered from a disability, 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