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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-26-90033 through 11-26-90035

ORDER

An individual has filed a Complaint against a United States magistrate judge and two United States district 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 *pro se* civil complaint, moved for leave to proceed *in forma pauperis* and for permission to file electronically, and filed a “Notice of Non-Consent (Objection) to U.S. Magistrate Judge.” The Third Subject Judge entered an order denying the motion to file electronically. Complainant then filed an amended complaint and a “Motion to Article III Federal Judge to E-File.” The Second Subject Judge issued an order overruling Complainant’s objection to the order denying his motion to file electronically. The Third Subject Judge

entered an order taking Complainant's *in forma pauperis* motion under advisement, ruling in part that the amended complaint was a shotgun pleading, and providing him with an opportunity to file a second amended complaint. Complainant then filed a notice of voluntary dismissal, and the Second Subject Judge entered an order denying all pending motions as moot and closing the case. Complainant then filed a notice of appeal.

Complaint

Complainant alleges the First Subject Judge failed to provide *pro se* litigants access to courts and violated a statutory provision stating that courts are always open by denying *pro se* litigants access to the electronic filing system. Complainant contends that the Second and Third Subject Judges' orders denying his motions for electronic filing privileges were "clearly erroneous and contrary to law, including access to courts," and asserts that the Third Subject Judge "disobeyed" his notice of non-consent to rulings by a magistrate judge. Complainant then discusses the cost and difficulties associated with filing documents in person. Finally, he states that he has alleged in another filing that the Second and Third Subject Judges violated a criminal statute on conspiracy against rights by failing to rule on his amended complaint by the date of a special election. 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.

Furthermore, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as 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 of the Second and Third Subject Judges’ findings, rulings, and orders in Complainant’s case, 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, committed a crime, were part of a conspiracy, 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