

APR 02 2016

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-26-90052 and 11-26-90053

ORDER

An individual has filed a Complaint against a United States magistrate judge and 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.

Complainant also filed three supplements. The filing of the supplements is permitted. *See* 11th Cir. JCDR 6.7.

Background

The record establishes that Complainant filed a “Complaint for Writ of Mandamus, Declaratory Relief, and Violation of Procedural Due Process” and moved to proceed *in forma pauperis*. After the case was transferred to the Subject Judges’ court, the Subject Magistrate Judge granted the *in forma pauperis* motion and directed the clerk to transmit a notice of service to the defendant in lieu of

Complainant serving a summons and complaint. The Subject Magistrate Judge then entered an order vacating the portion of the prior order that directed the clerk to transmit the notice of service in the light of the relief sought. The order stated that service of process would not issue at that time and directed that the case be submitted to the assigned district judge for a frivolity determination. The case remains pending.

The record also establishes that Complainant filed a civil complaint against multiple defendants, a motion to proceed *in forma pauperis*, and an “emergency” motion for a temporary restraining order. After the case was transferred to the Subject Judges’ court, the Subject Magistrate Judge granted the *in forma pauperis* motion, stated that service of process would not issue at that time, and directed that the case be submitted to the assigned district judge for a frivolity determination. The Subject District Judge then determined that the complaint failed to state a claim for relief and permitted Complainant to file an amended complaint. The case remains pending.

The record also establishes that Complainant filed a civil complaint against a corporation, which included a request for injunctive relief, and he filed a motion to proceed *in forma pauperis*. After the case was transferred to the Subject Judges’ court, the Subject Magistrate Judge granted the *in forma pauperis* motion, stated that service of process would not issue at that time, and directed that the case be submitted to the assigned district judge for a ruling. A different district judge declined assignment of the case, and the

case was reassigned to the Subject District Judge, who issued an order denying the motion for injunctive relief. The case remains pending.

Complaint

Complainant alleges the Subject Magistrate Judge issued orders without authority or jurisdiction, applied inapplicable procedural rules, caused delay, granted him *in forma pauperis* status but ordered that service of process would not issue in violation of Fed. R. Civ. P. 4(c)(3), and issued a void order that purported to vacate in part another void order. He alleges that the Subject District Judge's failure to issue an order of reference to the Subject Magistrate Judge constituted an "administrative oversight" that resulted in the issuance of void orders. Complainant complains about delay in conducting frivolity screenings, in correcting an allegedly "void appearance" and a "false service entry," and in addressing "known jurisdictional defects." He contends the Subject Judges have engaged in "the same pattern" of conduct across multiple cases.

Supplements

In the first supplemental filing, Complainant alleges that the Subject District Judge made multiple false statements in an order about the contents of his complaint, relied on non-binding authority while ignoring controlling Supreme Court precedent, ignored his emergency motion for a temporary restraining order for 73 days, and failed to provide him an adequate accommodation for his disabilities. Complainant also contends that it is impossible for the

Subject District Judge to be impartial because he is assigned to multiple cases Complainant filed.

In his second supplemental filing, Complainant complains about delay in the first above-described case despite that the docket header indicates the case has “the most expedited classification available.” He contends that the Subject District Judge issued a substantive order in one case while multiple motions he submitted in another case were not docketed, which “create[d] a documented disparity in treatment between” the two cases and called the Subject Judge’s impartiality into question. He states that if the failure to docket his motions was the “product of direction rather than oversight ... that would constitute an affirmative obstruction of a disabled pro se litigant’s access to the court.” He states that the Subject District Judge’s pattern of conduct in two cases “is attributable to the judge’s treatment of this specific litigant across multiple proceedings.”

In his third supplemental filing, Complainant alleges that in the third above-described case, the Subject Magistrate Judge issued orders without a designation or an order of reference and granted him *in forma pauperis* status but improperly disallowed service. He alleges the Subject District Judge acted without authorization, cited a void document, applied the wrong legal standard, falsely stated that a motion did not reference statutes or case law, placed the defendant in the “wrong defendant category,” and improperly issued a merits ruling before conducting a frivolity screening. Complainant also takes issue with the actions of other individuals.

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, findings, rulings, and

orders in his cases, 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, were not impartial, made false statements, 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