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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-26-90074 and 11-26-90075

ORDER

An individual has filed a Complaint against a United States magistrate judge and a United States circuit 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 in state court a civil complaint against multiple defendants, who removed the case to federal court. Complainant moved to remand the case, and the Subject Magistrate Judge issued a report recommending that the motion be denied. The district court adopted the report and recommendation, and Complainant appealed. A panel that included the Subject Circuit Judge dismissed the appeal for lack of jurisdiction. Afterward, the Subject Circuit Judge entered an order granting the appellees' motion to strike Complainant's initial brief.

Complainant later filed notices of appeal as to additional orders entered by the district court. After the appeals were consolidated, he filed a motion to recuse, and the panel, which included the Subject Circuit Judge, denied the motion. The defendants filed motions for summary affirmance, and this Court directed the clerk's office to take no action on any new motions Complainant filed until a ruling on the summary-affirmance motions. The appeals remain pending.

The record also establishes that Complainant filed in this Court a petition for writ of prohibition pertaining to the above-described case and a different district court case. A panel that included the Subject Circuit Judge denied the petition.

Complaint

Complainant alleges the Subject Judges retaliated against him, violated his constitutional rights, prevented him from appealing, failed to liberally construe his pleadings, colluded with a clerk's office employee, "systematically [p]rofiled" him, treated him in a demonstrably egregious and hostile manner, strategically delayed acting on his pleadings, made false statements, engaged in *ex parte* communications, and violated statutes, rules, and the Code of Conduct for United States Judges. He further alleges the Subject Circuit Judge had a conflict of interest and a "[f]inancial, [p]olitical and [p]ersonal [i]nterest" in his appeals. He also takes issue with the actions of other individuals, and 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, findings, rulings,

reports, recommendations, and orders in his cases and appeals, 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 engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge