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David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-26-90080 and 11-26-90081

ORDER

An individual has filed a Complaint against a United States district judge and a United States magistrate 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 *pro se* civil complaint against multiple defendants and motions to appoint counsel and for injunctive relief. He later filed motions to recuse the Subject Judges complaining about delay. The Subject Magistrate Judge issued an order and report denying Complainant's motions to appoint counsel and for recusal and recommending that his motions for injunctive relief be denied. Complainant filed objections and additional motions, and the case remains pending.

Complaint

Complainant alleges he is in a “two-judge recusal loop” in which the Subject Magistrate Judge ruled on his motion to recuse the Subject District Judge, who in turn, is reviewing the Subject Magistrate Judge’s report and recommendation. He contends that a reasonable person would question the Subject Judges’ impartiality under the circumstances. Complainant also takes issue with delay in the case, and he states that the Subject Magistrate Judge ruled on his motions only after he filed a motion to recuse. He states, “this timing and selective delay appear punitive and one-sided rather than neutral case management.” He contends that delay in ruling on one of his motions led to him losing access to filings in his case. Complainant takes issue with the denial of a motion to change health providers, contending the Subject Magistrate Judge improperly referred to his “treating provider” as an “insurance company.” He also takes issue with the denial of his motion to appoint counsel, contending it was impossible for him to adequately present the case *pro se* and that the Subject Magistrate Judge created a “new, judge-created requirement” that makes it more difficult for disabled *pro se* litigants to obtain counsel.

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, report, recommendations, and orders in his 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, were not impartial, 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