

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 16 2020

David J. Smith  
Clerk

**CONFIDENTIAL**

**BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT**

**Judicial Complaint Nos. 11-19-90097 and 11-19-90098**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against United States Magistrate Judge \_\_\_\_\_ and United States District Judge \_\_\_\_\_ of the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

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**ORDER**

\_\_\_\_\_ ("Complainant") has filed this Complaint against United States Magistrate Judge \_\_\_\_\_ and United States District Judge \_\_\_\_\_ (collectively, "the Subject Judges"), pursuant to Chapter 16 of Title 28 U.S.C. § 351(a) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States ("JCDR").

**Background**

The record shows that in April 2018 Complainant filed a civil rights action against multiple defendants raising a claim stemming from an altercation at his place of incarceration. He then filed a motion to proceed in forma pauperis (IFP) and multiple motions for the appointment of counsel, and a magistrate judge who is not one of the Subject Judges granted the IFP motion and denied without prejudice the motions to appoint counsel. Complainant filed objections to a report recommending that he be permitted to amend his complaint, and Judge \_\_\_\_\_ construed the filing as a motion to appoint counsel and denied it.

In October 2018 Complainant filed a "Final Amended Complaint." A magistrate judge's report recommended allowing Complainant to proceed on his claim of deliberate indifference to his medical needs, which he had asserted against unnamed deputies. The report also recommended dismissal of certain named defendants. A couple of months later, Judge \_\_\_\_\_ entered an order adopting in part the report and recommendation. The order allowed Complainant to proceed on his claim of deliberate indifference to his medical needs and declined to dismiss a certain named defendant. In January 2019 Judge \_\_\_\_\_ became the assigned magistrate judge in the case.

After that, Complainant filed a motion for the appointment of counsel, and Judge \_\_\_\_\_ denied it without prejudice, finding that he had not shown exceptional circumstances warranting the appointment of counsel. Complainant filed objections to the order, which Judge \_\_\_\_\_ construed as a motion for reconsideration and denied. In February 2019 Complainant filed another motion for the appointment of counsel, and Judge \_\_\_\_\_ denied it for the reasons stated in a previous order. Complainant filed a "Notice," which Judge \_\_\_\_\_ treated as a motion for reconsideration and denied. Also in February 2019 one defendant filed a motion to dismiss the Final Amended Complaint.

In March 2019 Judge \_\_\_\_\_ issued a scheduling order setting out deadlines for discovery. The next month, Complainant filed another motion for the appointment of counsel, which Judge \_\_\_\_\_ denied. In May 2019 a defendant filed a motion to compel, seeking an order requiring Complainant to provide more complete answers to interrogatories. In June 2019 Judge \_\_\_\_\_ issued a report that recommended granting one defendant's motion to dismiss because Complainant had failed to state a claim as to that defendant.

Complainant then filed a motion to incur costs for expert witnesses. Judge \_\_\_\_\_ issued an order denying the motion, finding in part that expert medical testimony was not necessarily required for Complainant to prove his claim and that the issues in the case did not appear to be complicated. Judge \_\_\_\_\_ also issued an order granting in part the defendant's motion to compel and ordered Complainant to provide more responsive and detailed answers to interrogatories. Complainant filed multiple discovery related documents, which Judge \_\_\_\_\_ ordered stricken.

In August 2019 Judge \_\_\_\_\_ issued an order adopting Judge \_\_\_\_\_ report and recommendation with certain alterations, granting one defendant's motion to dismiss, and directing that the defendant be terminated as a party to the case. Later that month, other defendants filed a motion for summary judgment. In October 2019 Judge \_\_\_\_\_ issued a report recommending that the motion for summary judgment be granted, generally finding that no reasonable juror could find that the defendants were deliberately indifferent to Complainant's medical needs. Complainant filed objections to the report and recommendation.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judges: (1) "denied [him] expert witnesses"; (2) "allowed" the defendants "to abuse [him] with dilatory tactics and lie about questions in interrogatories"; (3) "refuse[d] to mediate"; and (4) acted with bias in "dis[miss]ing the case on obviously false information." Complainant asserts that he answered all interrogatories and contends that defendants were dismissed from the case based on an irrelevant question in an

interrogatory. He also complains that the Subject Judges “blindly” denied “several sound request[s]” for the appointment of counsel, and he appears to complain that some of his filings were stricken. He attached documents to his Complaint.

### Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” 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” states in part:

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.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, rulings, reports, recommendations, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judges were biased or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B), and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists,” JCDR 11(c)(1)(D). For those reasons, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and Rule 11(c)(1)(B) and (D) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.



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Chief Judge