

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90131

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

MAR 02 2022

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioners' complaint filed on November 5, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on December 10, 2021, and the petition for review filed by petitioners on January 18, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90131

IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 10 2021

David J. Smith
Clerk

IN RE: The Complaint of _____ and _____ against 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.

ORDER

_____ and _____ (collectively “Complainants”) have filed this
Complaint against United States District Judge _____ (the “Subject Judge”),
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 September 2019 Complainants filed an amended *pro se*
civil rights action against multiple defendants raising claims stemming from certain state
court proceedings, and the defendants filed motions to dismiss the amended complaint.
The next month, Complainants filed a motion for leave to file electronically, and a
magistrate judge entered an order denying the motion, stating that *pro se* litigants were
afforded sufficient access to the court through paper filing.

In January 2020 the magistrate judge issued a report recommending, among other
things, that the motions to dismiss be granted and the amended complaint be dismissed
without leave to amend. Over Complainants’ objections, in February 2020 the Subject
Judge entered an order adopting the report and recommendation and directing the clerk to
close the case. After that, Complainants filed multiple motions seeking various types of
relief including additional motions requesting access to electronic filing, and the
magistrate judge issued an order denying the motions, finding they failed to establish they
were entitled to an exemption from the general rule that *pro se* litigants were not
permitted to file electronically.

After additional proceedings, in April 2020 the Subject Judge issued an order
directing Complainants to show cause as to why they should not be sanctioned for
frivolous filings and harassment of court personnel, and in June 2020 Complainants filed
a response. In April 2021 the Subject Judge issued an order that, among other things: (1)

prohibited Complainants from filing anything in the division of the district court without it first being reviewed by a magistrate judge as a result of their vexatious litigation; (2) setting the order to show cause for a hearing; and (3) stating that a failure to appear at the hearing could result in the imposition of sanctions.

In late April 2021, the magistrate judge issued an order denying three motions Complainants had filed, and the next month, Complainants filed an “Appeal/Objection” to the magistrate judge’s order. The hearing on the show cause order was held in July 2021. On July 23, 2021, a notice of a hearing was issued, and a telephone conference was held on July 27, 2021.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants allege the Subject Judge: (1) manipulated and omitted exhibits, failed to docket certain motions, and docketed an incomplete document; (2) acted with an improper motive to justify sanctions against them as minority pro se individuals and to silence them by obstructing court proceedings; (3) violated their due process rights by instructing them not to file anything until an order was issued in the show cause proceedings; (4) issued a premature judgment and premature order on a motion for reconsideration; (5) failed to give them notice of the evidentiary nature of the July 2021 hearing; (6) retaliated against them for filing a previous judicial misconduct complaint against the Subject Judge; (7) stated they would never be granted electronic filing privileges, which showed the outcome of the case was “predetermined for pro se of minority”; and (8) intentionally discriminated and retaliated against them.

Complainants state they “feel extraneous and targeted due to their pro se status with ethnicity” and “feel harassed due to being a minority pro se.” They request the appointment of a special committee, and they attached documents to their 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 Complainants' allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the above-described case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainants' remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, improperly manipulated or omitted documents, discriminated against or harassed them, retaliated against them for filing a judicial complaint, 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**.

/s/ William H. Pryor Jr.

Chief Judge