

JUL 22 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-22-90082

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**ORDER**

An individual has filed a Complaint against 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 shows that in June 2021 Complainant filed a *pro se* civil complaint against one defendant. The defendant later filed a motion for an extension of time to file an answer, and the Subject Judge granted the motion, giving the defendant until January 14, 2022, to file a response. In January 2022 Complainant filed a “Supplemental Complaint” that was docketed as an amended complaint, and on January 20, 2022, the defendant filed a motion to dismiss the amended complaint. The next month, the Subject Judge

issued an order directing Complainant to show cause why the motion to dismiss should not be granted, and Complainant filed a response to the show cause order.

In March 2022 the Subject Judge issued a report recommending that the defendant's motion to dismiss be granted and the amended complaint be dismissed with prejudice for failure to state a claim as to certain claims and lack of jurisdiction as to the remaining claims. Over Complainant's objections, in July 2022 the district judge adopted the report and recommendation, granted the defendant's motion to dismiss, and dismissed the case.

### **Complaint**

Complainant first states that the Subject Judge's order to show cause was "harsh considering the defendant filed his answer six days after the court ordered deadline (without repercussions)." Complainant then contends that, in her report and recommendation, the Subject Judge made her own arguments "using hypotheticals and rearranging facts to support dismissal," "censor[ed]" his complaint and blamed him for not telling the court what was censored, made arguments the defendant did not raise, ignored an issue he raised, fabricated citations, and "condemned [him] for not producing evidence" when discovery had not yet been held.

Complainant states that, without giving him notice or an opportunity to be heard, the Subject Judge excluded pleadings, made false statements, and made a "plausibility determination" that was not based on the record. Finally, Complainant states the Subject

Judge dismissed the case “for an infirmity that [she] created,” was deliberately indifferent to his constitutional rights because he was a *pro se* litigant, and “tainted this litigation.”

### **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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, orders, and report and recommendations in the above-described case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise

an inference that the Subject Judge was not impartial, made false statements, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.  
Chief Judge