

OCT 18 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

---

Judicial Complaint No. 11-22-90127

---

**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 October 2021, Complainant filed a prisoner civil rights action against a defendant, and after various proceedings, he filed a second amended complaint. In April 2022, the defendant filed a motion to dismiss the complaint. Afterward, Complainant filed, among other things, a motion to expedite issuance of a report and recommendation, and in August 2022, the Subject Judge denied the motion but noted that the court would consider the motion to dismiss as expeditiously as possible.

Complainant then filed a motion to expedite issuance of a scheduling order. The case remains pending.

### **Complaint**

Complainant states that the Subject Judge is barring him from receiving redress by not issuing a scheduling order in the case, as required by Federal Rule of Civil Procedure 16(b).

### **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. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

The Complaint fails to present a basis for a finding of misconduct. Complainant’s allegation concerns the substance of the Subject Judge’s official actions, and the allegation is directly related to the merits of the Subject Judge’s decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). For that reason, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.  
Chief Judge