

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUN 11 2020

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-20-90022**

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

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IN RE: The Complaint of \_\_\_\_\_ against United States Magistrate 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 \_\_\_\_\_ (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 August 2017 Complainant filed in state court a lawsuit against three defendants, and two defendants removed the case to federal court the next month. In July 2018 Complainant filed an amended complaint, raising claims of retaliation under Title VII of the Civil Rights Act of 1964, as well as multiple state law claims. Several months later, the Subject Judge was assigned as the magistrate judge in the case.

In April 2019 Complainant filed a motion for partial summary judgment, and the next month, one defendant filed a cross-motion for summary judgment. On May 17, 2019, Complainant filed an unopposed motion for an extension of time to file a reply brief and a response to the defendant’s cross-motion for summary judgment, and on May 23, 2019, he filed a reply and multiple responses. On May 28, 2019, the Subject Judge entered an order granting Complainant’s motion for extension of time, giving him until June 6, 2019 to file a reply and response.

In September 2019 the defendants filed motions for summary judgment, and on September 26, 2019, Complainant filed an unopposed motion for extension of time to respond to the summary judgment motions. A minute entry reflects that telephone conferences were held before the Subject Judge on September 30 and October 2, 2019 at which the Subject Judge, among other things, granted Complainant’s motion for

extension of time. Later in October 2019, Complainant filed cross-motions for summary judgment against the defendants.

A minute sheet filed on November 12, 2019 reflects that a telephone conference was held before the Subject Judge regarding Complainant's cross-motion for summary judgment against two defendants, and that the Subject Judge granted the defendants' request for additional time to file a response to the motion.<sup>1</sup> In February 2020 the Subject Judge issued a report in which he, among other things, recommended that: (1) Complainant's cross-motions for summary judgment be denied as untimely; (2) his motion for partial summary judgment be denied; (3) the defendants' motions for summary judgment be granted; and (4) one defendant's cross-motion for summary judgment be granted.

After that, Complainant filed a motion to recuse the Subject Judge, arguing the Subject Judge: (1) was not honest regarding what the November 12, 2019 conference was about; (2) was biased against him; and (3) had worked at the same office as counsel for one of the defendants. He also filed objections to the report and recommendation. In March 2020 the district judge entered an order in which he adopted the Subject Judge's report and recommendation as the opinion of the court and denied the motion to recuse as moot. Complainant filed a motion for reconsideration and a motion for sanctions, and the district judge denied those motions. Complainant filed a notice of appeal, and this Court later dismissed the appeal for lack of jurisdiction because the March 2020 was not final or otherwise immediately appealable.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge "was not honest" regarding what transpired at the November 12, 2019 conference. He asserts the conference was about whether his cross-motion for summary judgment was timely filed, not an extension of time for two defendants to file a reply to the cross-motion. Complainant states the Subject Judge "did not adequately state" what the conference was about in the minute entry for the hearing, as it did not address the question of whether his cross-motion for summary judgment was timely.

Complainant asserts the Subject Judge stated at the conference that he could not reject the motion as untimely, and he states the Subject Judge's "dishonesty is clear evidence of misconduct and the biased behavior he has demonstrated in this case to help the defendants and sabotage [Complainant's] case." He contends that the Subject Judge's finding in his report that the cross-motion for summary judgment was untimely was inconsistent with his statements at the November 2019 conference. Complainant states he believes the Subject Judge "intentionally did not write what the conference was about

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<sup>1</sup> The minute sheet reflects that the conference was held on November 8, 2019.

in order to assist the defendants in this matter, and his actions clearly demonstrate bias and misconduct.”

Next, Complainant complains that the Subject Judge did not grant his May 2019 unopposed motion for an extension of time “until two business days later,” which caused him to submit incomplete documents. He also complains the Subject Judge did not grant another unopposed motion for an extension for four days, which he contends prejudiced his case. In contrast, Complainant states, the Subject Judge granted the defendants’ unopposed motions for extension the same day or the next day, citing four examples. Complainant contends the different treatment shows the Subject Judge was biased against him and had a “deep-seated favoritism towards” the defendants’ counsel.

Finally, Complainant states that the Subject Judge had worked in the same United States Attorney’s Office at the same time that co-counsel for one of the defendants worked there. He asserts this is a “possible explanation” for the Subject Judge’s bias in the case. He attached various 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 Judge’s official actions, findings, rulings, orders, and report in the 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 made dishonest statements, was biased against Complainant or in favor of the defendants, had a conflict of interest, 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