

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90028

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUN 22 2020

David J. Smith  
Clerk

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 September 2019 Complainant filed a motion for leave to  
proceed in forma pauperis (IFP), and the Subject Judge entered an order taking the  
motion under advisement pending the filing of a complaint. The next month,  
Complainant filed a complaint against three defendants, stating the basis of jurisdiction  
was the “Medic[ai]d” law. The Subject Judge then entered an order taking the IFP  
motion under advisement pending the filing of an amended complaint, noting that claims  
arising under the Medicare Act must first be brought through an administrative appeals  
process and that it was unclear if Complainant had exhausted his administrative remedies.

Later in October 2019, Complainant filed an amended complaint in which he  
stated that he did not file under the Medicare Act, but instead filed under the Medicaid  
law. In December 2019 the Subject Judge entered an order again taking the IFP motion  
under advisement pending the filing of a second amended complaint addressing various  
issues. The order initially noted that Complainant correctly pointed out that he was suing  
under the Medicaid law. The Subject Judge also found that the amended complaint  
contained conclusory statements, noting that an assertion that a defendant had no in-  
network or out-of-network doctors was contradicted by a review of the defendant’s  
website showing the providers in Complainant’s region.

Later in December 2019, Complainant filed a second amended complaint. In April 2020 the Subject Judge issued a report recommending that Complainant's IFP motion be denied and his second amended complaint be dismissed for failure to state a cause of action against any defendant. Over Complainant's objections, the district judge entered an order adopting the report and recommendation and dismissing the case.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge never read his complaint, as she incorrectly stated that he filed under the Medicare Act when he actually filed under the Medicaid law. He asserts the Subject Judge misstated that he lived in a certain county and claimed he had access to doctors based on an improper review of the defendant's records. Complainant contends the Subject Judge improperly investigated his insurance instead of ruling on his filings. Finally, he complains about the Subject Judge's delay in issuing a recommendation on his December 2019 second amended 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.

In addition, 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" provides 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."

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the case, including his allegations of delay, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge 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