

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

**11-20-90036**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**JAN 04 2021**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW\***

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Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 21 July 2020, and of the petition for review filed by the complainant on 28 August 2020, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:

  
United States Circuit Judge

\* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

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

**11-20-90037**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL**

**JAN 04 2021**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW\***

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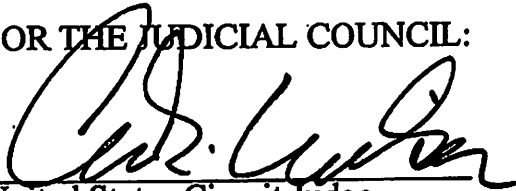
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

**FOR THE JUDICIAL COUNCIL:**

  
United States Circuit Judge

\* Chief Circuit Judge William H. Pryor Jr. did not take part in the review of this petition.

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-20-90036 and 11-20-90037

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 21 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 \_\_\_\_\_ and 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.

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ORDER

\_\_\_\_\_ (“Complainant”) has filed this Complaint against United States Magistrate Judge \_\_\_\_\_ and United States District Judge \_\_\_\_\_ (collectively, the “Subject Judges”), 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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in May 2019 Complainant, through his attorney \_\_\_\_\_, filed a lawsuit against two defendants, raising claims under the Fair Housing Act and state law claims. Several months later, Complainant, individually and as guardian for his son, and other individuals filed an amended complaint against the defendants. The defendants, through their attorney \_\_\_\_\_, filed a motion to dismiss the amended complaint, and the plaintiffs filed a motion to amend the amended complaint.

In November 2019 \_\_\_\_\_ filed a motion to withdraw as counsel, stating Complainant had informed \_\_\_\_\_ that he wished to proceed pro se and that irreconcilable differences had resulted between them. Following a discovery hearing on November 19, 2019, Judge \_\_\_\_\_ issued an order directing the plaintiffs to provide certain information and to respond to discovery requests. The order also stated that the plaintiffs’ failure to properly provide discovery was not substantially justified and directed them to pay the defendants’ attorney \$3,000 in attorney’s fees.

A few days later, Judge \_\_\_\_\_ entered an order granting in part the motion to withdraw as counsel, terminating \_\_\_\_\_ as to Complainant only. Later in November 2019 Judge \_\_\_\_\_ entered an order granting in part and denying in part the defendants' motion to dismiss, dismissing certain counts with prejudice for failure to state a claim on which relief could be granted, and granting the plaintiffs' motion to amend.

The next month, the defendants filed a "Motion for Partial Relief of Order," arguing an additional count failed to state a claim on which relief could be granted. The plaintiffs filed a second amended complaint that included a demand for a jury trial. \_\_\_\_\_, on behalf of all plaintiffs except Complainant, then filed objections to Judge \_\_\_\_\_ order imposing monetary sanctions, arguing in part that the applicable discovery requests were addressed only to Complainant and it was not the other plaintiffs' responsibility to respond to those requests. Complainant filed a motion for reconsideration of the order granting in part \_\_\_\_\_ motion to withdraw and a motion in opposition to the motion to withdraw, stating that he never informed \_\_\_\_\_ that he wished to proceed pro se.

Following a discovery hearing on December 12, 2019, Judge \_\_\_\_\_ issued an order amending the November 19, 2020 order to state that Complainant, individually, was required to pay the defendant's attorney \$3,000 in fees within seven days of Judge \_\_\_\_\_ ruling on the objection to the fees. In mid-December 2019 the defendants filed a motion to strike the plaintiffs' demand for a jury trial, arguing they had waived their right to a jury trial in their lease agreement with the defendants.

On December 23, 2019, Judge \_\_\_\_\_ issued an order denying the defendants' Motion for Partial Relief of Order. Judge \_\_\_\_\_ also entered an order granting Complainant's motion for reconsideration of the order granting \_\_\_\_\_ motion to withdraw, and the order vacated the order granting the motion to withdraw and denied \_\_\_\_\_ motion to withdraw. Complainant then filed a pro se motion in which he complained about \_\_\_\_\_ actions, alleged she had provided false information to the court, and requested that the court order her to submit affidavits in connection with certain discovery.

On December 26, 2019, \_\_\_\_\_ filed a motion seeking to withdraw as counsel for all plaintiffs, stating there were irreconcilable differences between him and his clients, and the next day, he filed a motion to strike Complainant's pro se motion because he filed it while represented by counsel. Also on December 27, 2020, Judge \_\_\_\_\_ entered orders granting \_\_\_\_\_ motion to withdraw and providing Complainant with an opportunity to object to the fee award. The same day, Complainant filed a motion in opposition to \_\_\_\_\_ motion to withdraw.

In January 2020 the plaintiffs filed a motion for the appointment of counsel or to refer the case to the office of the Attorney General because it “could be considered a ‘class action’ case.” Judge \_\_\_\_\_ then entered an order denying as moot Complainant’s motion in opposition to \_\_\_\_\_ motion to withdraw. Judge \_\_\_\_\_ entered an order granting in part and denying in part the plaintiffs’ motion for appointment of counsel, referring the case to the court’s volunteer attorney program.

After that, Complainant filed, among other things, objections to Judge \_\_\_\_\_ orders requiring him to pay attorney’s fees in which he argued that \_\_\_\_\_ had made misrepresentations in the case, acted with bad intentions, and sought to delay the case for improper reasons. In February 2020 Judge \_\_\_\_\_ issued an order overruling Complainant’s objections, finding he did not establish that the order directing him to pay fees was clearly erroneous or contrary to law. The order stated that although Complainant’s pro se filings were “difficult to decipher,” the court had “fully and carefully considered all of the arguments and evidence contained in” his objections and a supplement to those objections.

The plaintiffs then filed, among other things, a motion requesting that the court enforce a subpoena directed to a cellular telephone provider, and Judge \_\_\_\_\_ ordered the motion stricken for failure to comply with the discovery procedures in place. In early March 2020 Judge \_\_\_\_\_ also issued an order granting \_\_\_\_\_ motion to strike. Following a discovery hearing on March 5, 2020, Judge \_\_\_\_\_ entered an order stating that the clerk would have a new subpoena issued for the telephone provider. Later that month, Judge \_\_\_\_\_ issued an order granting the defendants’ request to strike the plaintiffs’ demand for a jury trial, finding the totality of the circumstances supported that the waiver was enforceable, consented to voluntarily, and not unconscionable, contrary to public policy, or unfair.

After a discovery hearing on March 24, 2020, Judge \_\_\_\_\_ entered an order addressing various discovery-related matters and directed Complainant to provide a blank “USB” to \_\_\_\_\_ firm so that she could copy information to the USB and return it to Complainant. Another discovery hearing was held before Judge \_\_\_\_\_ on March 31, 2020, and he issued an order on discovery-related matters. After an additional discovery hearing on April 9, 2020, Judge \_\_\_\_\_ issued an order that, among other things, directed \_\_\_\_\_ to provide Complainant with legible copies of the documents he could not read.

On April 10, 2020, Judge \_\_\_\_\_ issued an order granting a motion to stay or extend deadlines the defendants had filed, and she issued an amended scheduling order. Following a discovery hearing on April 28, 2020, Judge \_\_\_\_\_ issued an order on various discovery-related matters. The plaintiffs filed objections to the order, and Judge \_\_\_\_\_ issued an order overruling the objections for various reasons. Another

discovery hearing was held before Judge \_\_\_\_\_ on June 11, 2020, and he issued an order addressing three discovery matters.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends Judge \_\_\_\_\_ may have committed misconduct at the November 19, 2019 discovery hearing when he stated “we here do not do investigations” in response to Complainant’s request for an investigation about who was responsible for delay in the discovery process. Complainant asserts the statement showed Judge \_\_\_\_\_ did not want the truth to come out. He also alleges that, during the same hearing, Judge \_\_\_\_\_ became very aggressive, yelled at him, and threatened to fine him when he requested that \_\_\_\_\_ explain a certain matter to the court. Complainant alleges that Judge \_\_\_\_\_ “aggressive and unprofessional behavior” has occurred on about three different occasions, and he states Judge \_\_\_\_\_ may have committed misconduct by treating litigants or others in a demonstrably egregious and hostile manner.

Next, Complainant takes issue with Judge \_\_\_\_\_ December 2019 order requiring him to pay a \$3,000 fine. He complains about the actions of \_\_\_\_\_ and \_\_\_\_\_, and he asserts Judge \_\_\_\_\_ “blindly believed” everything \_\_\_\_\_ said in connection with the fine. Complainant takes issue with Judge \_\_\_\_\_ March 2020 order granting \_\_\_\_\_ motion to strike, contending he was required to pay fees without an investigation into whether \_\_\_\_\_ had been dishonest. He also complains that Judge \_\_\_\_\_ did not allow him to file discovery motions, and alleges Judge \_\_\_\_\_ may have committed misconduct by failing to order his phone provider to reveal whether he received a call from \_\_\_\_\_ on a certain day.

Complainant takes issue with, among others, Judge \_\_\_\_\_ order denying the request to transfer the case to the office of the United States Attorney General and order granting the defendants’ motion to strike the demand for a jury trial. He alleges Judge \_\_\_\_\_ engaged in misconduct at the March 24, 2020 discovery hearing by directing Complainant to provide a USB to \_\_\_\_\_, refusing to issue an order directing email providers to provide certain information, and refusing to investigate possible lies. He alleges Judge \_\_\_\_\_ allowed \_\_\_\_\_ to lie at the April 4, 2020 discovery hearing.<sup>1</sup>

Complainant alleges that at the April 9, 2020 hearing, Judge \_\_\_\_\_ was very aggressive with him, screamed and threatened him several times, and threatened to arrest him in front of his wife and disabled son. Complainant states that, due to a “simple misunderstanding of the English language,” he was led to believe \_\_\_\_\_ husband

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<sup>1</sup> Complainant may be referring to the hearing held on April 9, 2020, as it does not appear a hearing was held on April 4, 2020.

had died in the past. He states that Judge \_\_\_\_\_ attitude made him “consider it discriminatory against [his] person” because of his “non-U.S. origin” and because his primary language is Spanish. He then alleges that he demonstrated that \_\_\_\_\_ lied at the hearing, but that Judge \_\_\_\_\_ was not aggressive with her. He also states his wife and son were present at the hearing, their names were mentioned at the start of the hearing, but their names did not appear in a certain Notice of Electronic Filing, which he believes was intentional and discriminated against his son due to his disability.

Next, Complainant states that Judge \_\_\_\_\_ granted \_\_\_\_\_ motion to withdraw without giving Complainant an opportunity to respond. He takes issue with Judge \_\_\_\_\_ February 2020 order overruling his objections to the fee award, contending her statements—that his filings were difficult to decipher and that she fully and carefully considered all of the arguments and evidence—were contradictory. He alleges Judge \_\_\_\_\_ did not review all the documents he provided or did not understand that the delay was the fault of \_\_\_\_\_.

Complainant states Judge \_\_\_\_\_ granted a motion to stay deadlines the defendants filed without giving the plaintiffs an opportunity to oppose the motion. He states the order was “suspiciously” entered the day after a hearing in front of Judge \_\_\_\_\_, which the plaintiffs believe constituted retaliation by the Subject Judges against Complainant and showed bias in favor of the defendants’ attorney. Complainant states Judge \_\_\_\_\_ gave additional time to the defendants’ attorney “as a prize for their malicious delay” and possibly with the aim of Complainant’s son dying before trial or to obstruct his son’s ability to receive justice. He requests various types of relief, and he attached various documents to his Complaint.

### Supplement

After he filed his Complaint, Complainant filed a supplemental statement. In the supplement, he states that Judge \_\_\_\_\_ incorrectly assumed certain facts in his order striking the plaintiffs’ motion for jury demand, certain statements in the order were “totally incorrect,” and he apparently did not read documents the plaintiffs filed. Complainant then alleges the Subject Judges may have engaged in misconduct by failing to take appropriate action after being informed that \_\_\_\_\_ lied to the court on several occasions, and the Subject Judges breached their duties by refusing to investigate allegations of attorney misconduct.

Complainant alleges that Judge \_\_\_\_\_ treated him in a demonstrably egregious and hostile manner at the April 9, 2020 hearing, and he asserts Judge \_\_\_\_\_ violated the Code of Conduct for United States Judges. In support, Complainant cites an email from \_\_\_\_\_ dated April 10, 2020, which he contends supports that Judge \_\_\_\_\_ treated him in an unprofessional manner. He attached what appears to be an email from \_\_\_\_\_ in which she states: “I’m not sure if you

understand that your ‘denouncements’ of me already are having an adverse impact on your standing before the Court. You were literally yelled at by Judge \_\_\_\_\_ yesterday for calling me a liar in a pleading.”

Complainant states the Judge \_\_\_\_\_ “refused” to grant various requests he made with respect to the defendants’ provision of discovery, which he contends showed Judge \_\_\_\_\_ was biased in favor of the defendants and their attorney and “could be considered” obstruction of justice. He asserts there is a “great possibility” of some sort of relationship between Judge \_\_\_\_\_ and \_\_\_\_\_ or her deceased husband. Complainant alleges that at the April 28, 2020 hearing, Judge \_\_\_\_\_ allowed \_\_\_\_\_ to speak longer than him and did not interrupt her, but that he interrupted Complainant, treated him in a demonstrably egregious and hostile manner, engaged in abusive or harassing behavior, argued with him, and “forced” him to answer a certain question in the affirmative. He attached various documents to the supplemental statement.

### Limited Inquiry

Rule 11(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States requires the Chief Judge to review complaints of judicial misconduct or disability and determine what actions should be taken on them. See JCDR 11(a). Rule 11(b) provides in part that, “In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, . . . may obtain and review transcripts and other relevant documents.” JCDR 11(b); see also 28 U.S.C. § 352(a). In conducting the limited inquiry, the Chief Judge “must not determine any reasonably disputed issue.” JCDR 11(b).

As part of a limited inquiry, I obtained and listened to the audio recordings of the discovery hearings held before Judge \_\_\_\_\_ on November 19, 2019, December 12, 2019, March 24, 2020, April 9, 2020, and April 28, 2020.

### 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 Judges’ official actions, findings, rulings, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges treated him in a demonstrably egregious and hostile manner, were biased against him or in favor of the defendants or their attorney, discriminated against him, retaliated against him, had a conflict of interest, engaged in abusive or harassing behavior, violated the Code of Conduct for United States Judges, or otherwise engaged in misconduct. See *Liteky v. United States*, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1157 (1994) (stating that bias or partiality is not established by “expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display.”).

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