

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

**11-20-90102**

**FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL  
MAR 18 2021**

**CIRCUIT EXECUTIVE**

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

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**ON PETITION FOR REVIEW\***

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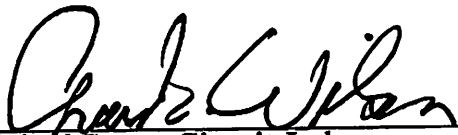
Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MOORE, THRASH, CORRIGAN, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

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 31 December 2020, and of the petition for review filed by the complainant on 19 January 2021, 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**.

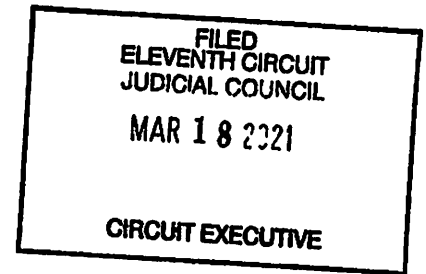
**FOR THE JUDICIAL COUNCIL:**

  
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**

11-20-90103



**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; MOORE, THRASH, CORRIGAN, 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 31 December 2020, and of the petition for review filed by the complainant on 19 January 2021, 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.

DEC 31 2020

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith  
Clerk

Judicial Complaint Nos. 11-20-90102 and 11-20-90103

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

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IN RE: The Complaint of \_\_\_\_\_ against United States District Judges  
\_\_\_\_\_ and \_\_\_\_\_ 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 District Judges \_\_\_\_\_ and \_\_\_\_\_ (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 July 2015 Complainant filed a civil action against a company, requesting that the court order the defendant to turn over certain documents. Judge \_\_\_\_\_, who was then a magistrate judge, issued a “Rule 26 Instruction Order” setting out various discovery deadlines. In October 2015 the defendant filed an answer in which it asserted a counterclaim against Complainant, and it filed a motion to dismiss the complaint. The next month, Complainant filed a motion for a default judgment, alleging the defendant did not serve him with its answer. The defendant then filed a motion to stay discovery pending the resolution of its motion to dismiss, and the parties filed a “Joint Report of Rule 26(f) Conference and Discovery Plan.”

Also in November 2015, Judge \_\_\_\_\_ entered an order granting the defendant’s motion to stay discovery and directing Complainant to file a response to the motion to dismiss. Complainant then filed a response and other documents. In September 2016 Judge \_\_\_\_\_ entered an order: (1) granting the defendant’s motion to dismiss, finding Complainant failed to state a claim on which relief could be granted; and (2) denying Complainant’s motion for default judgment because the defendant complied with Fed. R. Civ. P. 5 on methods of service.

In December 2016 the defendant filed a motion to voluntarily dismiss its counterclaim, which Judge \_\_\_\_\_ granted. Complainant then filed additional motions, and Judge \_\_\_\_\_ entered an order denying the motions because the case was closed. Complainant filed a notice of appeal, and in November 2017 this Court affirmed, holding the district court did not err in dismissing the complaint for failure to state a claim and did not abuse its discretion in staying discovery pending a ruling on the motion to dismiss.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the district court committed an “ethics rules violation” in connection with his motion for default judgment, and he complains he was not allowed any written discovery or given a hearing, in violation of the Federal Rules of Civil Procedure. He alleges the Subject Judges: (1) “interrupted due process of law” by granting a stay of the discovery period; and (2) ordered a supplemental Rule 26(f) meeting and issued a scheduling order “that was never granted to the Complainant.” Finally, he complains that Judge \_\_\_\_\_ denied a motion for a copy of all written discovery that he filed.

### Supplement

In his supplemental statement, Complainant contends that: (1) the order staying discovery hindered any meaningful settlement discussions with the defendant; and (2) a supplemental Rule 26(f) meeting and a hearing should have been allowed. He attached various documents to his supplement.

### 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, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judges' 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 Judges violated an ethics rule 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