

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-20-90155**

**FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT**

**FEB 03 2021**

**David J. Smith  
Clerk**

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

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IN RE: The Complaint of \_\_\_\_\_ against 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 District 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 May 2020 Complainant filed a civil rights action against a state and three state agencies, and he also filed a motion for leave to proceed in forma pauperis (IFP). In July 2020 the Subject Judge issued an order granting the IFP motion and dismissing the complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2). The order: (1) found that certain claims were to be dismissed because there was no private right of action under the relevant statutes; (2) found that claims brought pursuant to 42 U.S.C. § 1983 were due to be dismissed because states and state agencies cannot be sued under § 1983; (3) noted that the court declined to exercise supplemental jurisdiction over the remaining state law claims; and (4) found that, in any event, the state law claims would have to be dismissed because sovereign immunity protected the state and its agencies from suit for violation of state law. Complainant appealed, and this Court later clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge made false statements in her July 2020 order concerning the law to intimidate and discourage him from suing the state government in federal court. He takes issue with the Subject Judge’s finding that violations of federal statutes did not give rise to a private cause of action and that the state and its agencies were entitled to immunity,

contending the Subject Judge failed to follow binding precedent in making the findings. Finally, Complainant alleges the Subject Judge: (1) brought her impartiality into question; (2) should have disqualified herself from the case for engaging in misconduct; (3) violated her oath of office by substituting her “unlawful opinions” for the law; and (4) violated his constitutional rights.

### 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, rulings, findings, and dismissal order in the case, 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 made false statements, was not impartial, violated her oath of office, 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