

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-20-90181 and 11-20-90182

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

---

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.

---

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”).

Background

The record shows that in February 2020 Complainant filed a prisoner civil rights action against multiple defendants, and, on the complaint form, he answered “yes” to a question asking whether he had filed other lawsuits relating to his imprisonment and described one previous lawsuit. The complaint was signed under penalty of perjury. He also filed a motion for leave to proceed *in forma pauperis* (IFP) and a motion for injunctive relief. Judge \_\_\_\_\_ then entered an order noting that the complaint and IFP motion were on “out-dated forms” and directing Complainant to use the current forms.

In March 2020 Complainant filed an amended complaint where he answered “yes” to a question asking whether he had filed other lawsuits relating to his imprisonment and he described one previous lawsuit. The amended complaint was signed under penalty of perjury. He also filed another IFP motion, which Judge \_\_\_\_\_ granted. After that, Complainant filed, among other things, additional amendments to his complaint.

In September 2020 Judge \_\_\_\_\_ issued a report recommending that the case be dismissed without prejudice as malicious. Judge \_\_\_\_\_ found that Complainant twice represented under penalty of perjury that he had only filed one prior lawsuit related to his incarceration, but he had in fact filed three such lawsuits, and therefore, had not been truthful and abused the judicial process. Complainant filed objections to the report,

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 24 2021

David J. Smith  
Clerk

arguing in part that the report was misleading and that he should be given an opportunity to correct the “inadvertent omission” of his other prior cases. In October 2020 Judge \_\_\_\_\_ issued an order adopting the report and recommendation and dismissing the case without prejudice as malicious.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that Judge \_\_\_\_\_ report and recommendation contained false statements or misrepresentations that: (1) Complainant represented that he filed only one previous lawsuit, when he accurately answered all questions on the form; (2) he made false statements on two separate civil rights complaint forms, when he only completed one such form; and (3) the court sent him notice to disclose previous lawsuits but he refused, when the court never sent such notice. He alleges Judge \_\_\_\_\_ intentionally made misrepresentations of material fact and engaged in or committed libel, slander, defamation, malicious prosecution, and false reporting in the report and recommendation.

Complainant then alleges Judge \_\_\_\_\_: (1) engaged in or committed negligence, gross negligence, negligent misrepresentation, malicious prosecution, libel, defamation, and slander when he adopted the report and recommendation; (2) omitted facts and ignored the facts in Complainant’s objection to the report and recommendation; (3) “did not observe” Fed. R. Civ. P. 11; and (4) issued an order in favor of the defendants when they had not responded to the complaint. He asserts Judge \_\_\_\_\_ actions emboldened the defendants to act with impunity and prejudiced him.

### 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, report, 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 knowingly made false statements, committed crimes or torts, 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