

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90008

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

APR 07 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 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 October 2020 Complainant filed an employment discrimination complaint against multiple defendants, as well as a motion for leave to proceed *in forma pauperis* (IFP) and for the appointment of counsel. In December 2020 the Subject Judge issued an order granting the IFP motion and denying without prejudice the motion for appointment of counsel. The Subject Judge found the complaint provided insufficient factual allegations to allow the court to conduct a review under 28 U.S.C. § 1915(e)(2) and ordered Complainant to file an amended complaint within 21 days.

In January 2021 Complainant filed a motion to recuse the Subject Judge, stating that she declined to have a magistrate judge conduct all proceedings in the case and requesting that the case be reassigned to a district judge. On the same day, the Subject Judge entered an order granting in part the motion to recuse and directing the clerk to reassign the case to a district judge. The case was then reassigned to a district judge, and the Subject Judge was no longer assigned to the case.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first states that the attorney for the defendant was “somehow” aware of the lawsuit despite that no service had been made on the defendants, and she asserts that the Subject Judge engaged

in misconduct by alerting the defendants of the lawsuit. She then alleges the Subject Judge violated 28 U.S.C. § 636(c) and her “judicial duty” by declining to reassign the complex case to a district judge and that she should have recused herself from the case.

Next, Complainant alleges the Subject Judge: (1) was unethical, incompetent, and unable to remain impartial; (2) conspired with the defendants to rule in their favor; (3) issued an illegal order; (4) “stalled” the case; and (5) provided the defendants “classified and personal information that had not been available to the public,” which “tainted” the case. Complainant also states that it was “very suspicious, illegal, well above [the Subject Judge’s] jurisdiction [and] cold hearted” to deny Complainant’s request for an attorney and to give her only 21 days to amend her complaint. She attached documents to her 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.

Furthermore, 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 her allegations concerning delay and the Subject Judge’s failure to recuse, 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, she provides no credible

facts or evidence in support of her claims that the Subject Judge had improper communications or conspired with the defendants, was incompetent, was not impartial, improperly disclosed information, issued illegal orders, 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