

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90018

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAY 12 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 October 2019 Complainant filed a civil rights action against multiple defendants and a motion for leave to proceed *in forma pauperis* (IFP), and a magistrate judge granted the IFP motion. Later in October 2019, Complainant filed an amended complaint. After that, Complainant filed multiple motions seeking various types of relief, including two motions to disqualify the Subject Judge in which he contended the Subject Judge was likely to be a material witness and that he and Complainant were a member of the same church. Complainant also filed a motion for the appointment of counsel.

In July 2020 the Subject Judge issued an order dismissing the complaint for failure to state a claim and denying Complainant’s motions, finding in part that he provided no evidence that the court was biased or unable to remain impartial in the matter. Complainant filed a motion for reconsideration, which the Subject Judge denied.

The record shows that in June 2020 Complainant filed a civil complaint and an amended complaint against multiple defendants. The next month, Complainant filed a motion to disqualify the Subject Judge, stating he was likely to be a material witness and that he and Complainant were a member of the same church. The Subject Judge then entered an order denying the motion to disqualify and other motions Complainant had

filed, finding in part that Complainant provided no evidence that the court was biased or unable to remain impartial in the matter.

After that, Complainant filed, among other things, another motion to disqualify and a letter that was docketed as a motion to recuse the Subject Judge, arguing in part that the Subject Judge was biased because his “name [wa]s in the case” and his name was on a complaint filed in another case. After a hearing, in April 2021 the Subject Judge entered an order recusing himself from the case.

The record also shows that in December 2020 Complainant filed a civil action against multiple defendants and an IFP motion, and a magistrate judge granted the IFP motion. The Subject Judge was the assigned district judge in the case. Complainant then filed motions for the appointment of counsel and a letter that was construed as a motion for recusal in which he contended the Subject Judge’s name appeared on the complaint in the case and in another case he filed.

At a hearing on the motion to recuse, the Subject Judge orally denied the motion. In April 2021 the Subject Judge issued an order dismissing the case without prejudice as frivolous or for failure to state a claim, denying the pending motions as moot, and giving Complainant the opportunity to file an amended complaint. After that, the Subject Judge recused himself from the case.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant discusses certain injuries he received and states the Subject Judge did not help him, did not treat him with leniency, did not allow him to state that the defendants filed waivers of the service of summons, and did not serve him with a copy of a dismissal order. Complainant states he believes the Subject Judge retaliated against him because they used to be a member of the same church when the Subject Judge was a state court judge, and because the Subject Judge knew that Complainant was a whistleblower.

Next, Complainant states that it appears the Subject Judge had improper discussions with parties or counsel for one side in the case. He states the Subject Judge “read out [the] name of one case making [it] funny,” when it was not funny to Complainant. Finally, he complains the Subject Judge did not appoint him counsel when he suffered from mental health issues, which violated his rights under the United States Constitution and the Americans with Disabilities Act.

### 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, findings, rulings, and orders in the cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. His remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge retaliated against him, had a conflict of interest, had improper discussions with parties or counsel, 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