

**CONFIDENTIAL**

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

**MAY 19 2021**

**David J. Smith  
Clerk**

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

**Judicial Complaint No. 11-21-90020**

**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 2019 Complainant and a minor child filed in state court a civil complaint against multiple defendants, and the next month, two defendants removed the case to federal court. After that, the plaintiffs filed a motion for leave to file an amended complaint, and Complainant filed a Motion for Permission for Electronic Case Filing. In February 2020 the Subject Judge issued a report recommending that the minor child be dismissed from the case, as the plaintiffs failed to identify an appropriate legal representative for the child. In April 2020 the district judge adopted the report and recommendation and dismissed the minor child from the case.

In August 2020 the Subject Judge entered an order that, among other things, granted Complainant’s motion for leave to file an amended complaint and denied his motion for permission to file electronically, noting such permission was granted sparingly and that he offered no reason why it should be permitted in the case. The next month, Complainant filed an amended complaint, as well as a notice of change of address.

On February 8, 2021, the Subject Judge issued an order noting that Complainant’s amended complaint appeared to drop all but two defendants and construing the amended complaint as a notice of voluntary withdrawal as to the unnamed defendants. The order also directed Complainant to file within 14 days a stipulation of dismissal signed by all

remaining parties with respect to one defendant or a motion to dismiss the defendant, and to effect service on the remaining defendants within 30 days.

On March 3, 2021, Complainant filed a notice of dismissal as to one defendant and an amended complaint against one defendant. In April 2021 the Subject Judge issued a report recommending that the case be dismissed due to Complainant's failure to serve the defendants within the allotted time and his failure to comply with the order directing him to file a stipulation of dismissal signed by all parties as to one defendant or a motion to dismiss the defendant.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge failed to send the February 2021 order to the address he provided in his notice of change of address, which caused him to miss the deadline for taking action. He contends the Subject Judge's denial of his motion for permission to file electronically placed him at an "extreme disadvantage" and required him to incur additional costs that the defendant did not have to incur.

Complainant asserts the Subject Judge's actions "created a perception of bias in favor of the Defendant, represented by an attorney, by providing better, faster, and less costly access to the Court," created an "unfair and biased proceeding," caused "substantial delay" in the case, and prevented him from receiving a fair hearing. He attached documents to his 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, orders, reports, and recommendations in the case, including his allegations of delay, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge was biased against him or in favor of the defendant 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