

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-21-90025**

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

**JUN 02 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 March 2020 Complainant filed in a federal district court in \_\_\_\_\_ a civil action against a company, and the next month, the defendant filed a motion to dismiss the case. In July 2020 a district judge entered an order denying the motion to dismiss without prejudice and transferring the case to the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_.

The next month, the defendant filed another motion to dismiss the case. The Subject Judge then entered an order staying the case pending the resolution of an appeal Complainant had filed as to the transfer order. Complainant later filed a motion to reopen the case, and on October 9, 2020, the Subject Judge entered an order granting the motion to reopen and stating that the defendant had 14 days from the date of the order to respond to the complaint or request reinstatement of its previously filed motion to dismiss.

A month later, the Subject Judge entered an order noting the defendant had failed to move to reinstate its motion to dismiss and had not otherwise responded to the complaint, but finding the complaint must be dismissed as an impermissible shotgun pleading. The order gave Complainant 21 days to file an amended complaint. In late November 2020 Complainant filed an amended complaint, and the defendant filed a motion to dismiss the next month. In January 2021 Complainant filed a motion for a

default judgment, arguing the defendant was in default because it failed to respond within 14 days of the court's October 9, 2020 order.

Also in January 2021, the Subject Judge entered an order denying the motion for a default judgment because: (1) Complainant failed to move for a clerk's default before seeking a default judgment; and (2) exceptional circumstances that would justify entry of a default judgment were not present in the case. After that, Complainant filed, among other things, a request for entry of default and a motion for a default judgment. In March 2021 a magistrate judge entered an order denying the motion for entry of a clerk's default, finding Complainant was not entitled to such relief.

The same month, the Subject Judge issued an order granting the defendant's motion to dismiss and dismissing the amended complaint with prejudice for failure to state a claim. The order also denied Complainant's second motion for a default judgment and a construed request for reconsideration because: (1) the defendant responded to the amended complaint; (2) the defendant's untimely response was not prejudicial to Complainant; and (3) the entry of a default judgment was an extreme sanction not warranted in the case. Complainant filed a notice of appeal.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts the defendant abandoned the case for 74 days and that he was entitled to a default judgment in the case. He alleges the Subject Judge: (1) knowingly violated, misconstrued, and "selectively enforc[ed]" Fed. R. Civ. P. 55 on defaults and default judgments; (2) incorrectly stated in her January 2021 order that Complainant failed to file a motion for default; and (3) "ma[de] excuses for" the defendant. He also states that "someone at the court" changed the filing date of his notice of appeal, complains about the actions of a clerk, seeks various types of relief, and 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.

To the extent Complainant's allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders 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 knowingly violated or misconstrued Rule 55, favored 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