

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUN 02 2021

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-21-90026**

**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 May 2020 Complainant filed a motion for a temporary restraining order generally seeking to be separated from anyone who had COVID-19 at his place of incarceration. The Subject Judge entered an order directing Complainant to file a proper complaint and to either pay the filing fee or file a motion for leave to proceed *in forma pauperis* (IFP). In September 2020 the Subject Judge issued a report recommending that the case be dismissed due to Complainant’s failure to comply with the court’s order and failure to prosecute the case.

Over Complainant’s objections, the district judge adopted the report and recommendation, but noted the case would be reopened if Complainant filed an amended complaint by a certain deadline. After that, Complainant filed an amended complaint alleging various individuals failed to protect him from being exposed to COVID-19 and listing one prior lawsuit he had filed that was dismissed as frivolous, as malicious, or for failure to state a claim. He also filed a motion for leave to proceed IFP, and the district judge entered an order reopening the case. Complainant then filed a “Motion for Injunction and Sanctions” against the staff at his place of incarceration.

In November 2020 the Subject Judge issued a report recommending that Complainant’s IFP motion be denied pursuant to 28 U.S.C. § 1915(g) and his amended complaint be dismissed as an abuse of the judicial process. The Subject Judge stated that:

(1) Complainant failed to properly list his prior cases in his complaint; (2) it appeared he was willfully attempting to mislead the court about his prior litigation history; (3) his omission in listing his prior cases must be deemed intentional because he already had suffered a sanction for failing to honestly disclose all his prior cases; and (4) he was aware of the requirement that he must list any case dismissed as a “strike” because he previously had been barred from proceeding IFP absent sufficient allegations of imminent danger.

In a footnote, the Subject Judge found Complainant had not clearly shown he was in imminent danger due to insufficient safety protocols or the conditions of his confinement, stating his allegations were vague and conclusory and he had not alleged sufficient facts describing what any named defendant did or did not do. The Subject Judge also issued an order deferring a ruling on Complainant’s Motion for Injunction and Sanctions pending a ruling on the second report and recommendation.

After that, Complainant filed a motion seeking injunctive relief and objections to the Subject Judge’s second report and recommendations. In December 2020 the district judge issued an order adopting the second report and recommendation, denying Complainant’s IFP motion, dismissing his amended complaint for abuse of judicial process, and denying all pending motions. Complainant then filed, among other things, a notice of appeal.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant: (1) takes issue with the Subject Judge’s findings that he was not in imminent danger and that his allegations were vague and conclusory; (2) alleges the Subject Judge was incompetent, not qualified to make such findings, and did not understand the matter; (3) asserts the Subject Judge withheld relief until he paid the filing fee; (4) alleges the Subject Judge lied about being notified of the strikes in Complainant’s filing history; (5) asserts the Subject Judge failed on more than one occasion to study submissions before forming his opinions; and (6) states the Subject Judge failed to acknowledge receipt of his Motion for Injunction and Sanctions and failed to acknowledge his clearly stated positions and requests. Complainant also takes issue with the actions of the district judge, and 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.

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, 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 was incompetent, lied, 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