

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90044

IN THE MATTER OF A COMPLAINT FILED BY  
\_\_\_\_\_ AND \_\_\_\_\_

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 07 2021

David J. Smith  
Clerk

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IN RE: The Complaint of \_\_\_\_\_ and \_\_\_\_\_ 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**

\_\_\_\_\_ and \_\_\_\_\_ (collectively “Complainants”) have 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 September 2019 Complainants filed an amended *pro se*  
civil rights action against multiple defendants raising claims stemming from certain state  
court proceedings, and the defendants filed motions to dismiss the amended complaint.  
The next month, Complainants filed a motion for leave to file electronically, and a  
magistrate judge entered an order denying the motion, stating that *pro se* litigants were  
afforded sufficient access to the court through paper filing.

In January 2020 the magistrate judge issued a report recommending, among other  
things, that the defendants’ motions to dismiss be granted and the amended complaint be  
dismissed without leave to amend. Over Complainants’ objections, in February 2020 the  
Subject Judge entered an order adopting the report and recommendation and directing the  
clerk to close the case. After that, Complainants filed multiple motions seeking various  
types of relief, including a motion requesting electronic filing access, which the Subject  
Judge denied. In April 2020 the Subject Judge issued an order directing Complainants to  
show cause as to why they should not be sanctioned for frivolous filings and harassment  
of court personnel.

In February 2021 certain defendants filed a joint emergency motion seeking to  
remand the case to state court in response to a notice of removal Complainants had filed.

On February 19, 2021, the magistrate judge issued an order denying the motion, but on the same day the magistrate judge vacated the order. Also on February 19, 2021, the Subject Judge issued an order consolidating the case with the new case that had been opened, granting the joint emergency motion to the extent it sought remand, and remanding the case to state court. There has been additional activity in the case.

### Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants, one of whom is a doctor and both of whom are “Asian minority,” generally take issue with the Subject Judge’s February 19, 2021 order consolidating their cases and remanding them to state court. Complainants’ allege the Subject Judge sought to deprive them of their due process rights and that the timing of the order shows he conspired with the magistrate judge and a state court judge to instantly remand the matter so the state court judge could hold an improper hearing. They then allege the Subject Judge “[e]motionally tortur[ed]” them with the threat of sanctions by delaying ruling on the show cause order for more than 11 months.

Next, Complainants allege the Subject Judge acted with malice in denying them access to the court’s electronic filing system against the Centers for Disease Control’s guidelines and in disregard of the Americans with Disabilities Act, which caused them to be exposed to COVID-19. They state that one of their filings was not docketed and another filing was missing 20 pages, and they contend the Subject Judge manipulated docket entries and deleted their filings to “hinder the record on appeal.” They also allege the Subject Judge discriminated against them, harassed them, and retaliated against them for reporting or disclosing misconduct. Complainants state they believe if they were “white or attorney[s] whose first language is English,” they would have been treated more fairly and the outcome of the case would have been different. They attached documents to their 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 Complainants' allegations concern the substance of the Subject Judge's official actions, findings, rulings, and orders in the above-described case, including their complaints of delay, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainants' remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, was part of a conspiracy, discriminated or retaliated against Complainants, harassed them, manipulated the docket or deleted their filings, 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**.

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/s/ William H. Pryor Jr.

Chief Judge