

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90051

IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 07 2021

David J. Smith
Clerk

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.

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 in which they claimed they did not receive a copy of
the Subject Judge’s order. The Subject Judge issued an order granting the motion in part,
finding Complainants’ claim that they did not receive the order was disingenuous based
on what the clerk’s office informed the Subject Judge, but stating that another copy of the
order would be sent to them in an abundance of caution.

After various proceedings, 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, and in June 2020 Complainants filed

a response. 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. 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.

On April 26, 2021, the Subject Judge issued an order that, among other things: (1) prohibited Complainants from filing anything in the division of the district court without it first being reviewed by a magistrate judge, as a result of their vexatious litigation; (2) setting the order to show cause for a hearing at which Complainants and defendants' counsel were to appear in person; and (3) stating that a failure to appear at the hearing could result in the imposition of sanctions, including civil contempt. Complainants then filed a motion to attend the hearing remotely, arguing they were at high risk of contracting COVID-19, and the Subject Judge denied the motion, noting the court took precautionary measures related to COVID-19.

Previous Complaint of Judicial Misconduct or Disability

On April 26, 2021, the Clerk's Office of the United States Court of Appeals for the _____ Circuit received from Complainants a Complaint of Judicial Misconduct or Disability against a different federal judge.

Current Complaint

In the current Complaint of Judicial Misconduct or Disability, Complainants allege the Subject Judge retaliated against them for filing the earlier Complaint of Judicial Misconduct or Disability against a different judge. They state their earlier judicial complaint was docketed in the morning on April 26, 2021, and that at the end of the same day, the Subject Judge issued the order in the case labeling them vexatious litigants, directing that no further filings would be accepted without prior approval, and directing them to appear for a hearing on sanctions.

Complainants state that the order was issued on the same day they filed their judicial complaint when no action had been taken on the show cause order for nearly a year. They contend the order was entered "in haste" without identifying any of their frivolous filings and without providing them "due process to defend." They then state that the Subject Judge denied their request for a remote hearing without explanation with the knowledge that they were at high risk for contracting COVID-19, which "could only be explained on the basis of improper motive of further retaliation by contempt of the court."

Complainants assert they "have experienced harassment throughout the litigation," were forced to submit numerous filings, and were denied access to the court's electronic filing system, which prejudiced them. They complain the Subject Judge stated in an

order that they were “disingenuous” based on hearsay from an unidentified clerk, “instead of acknowledging the delay and/or misdirection of paper orders . . . sent via US mail.” Complainants state they were forced to prepare motions “to defend and clear their name,” which denied them due process and obstructed justice, and that they had to file many motions to protect the improper consolidation of their cases and other issues. 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.

To the extent Complainants’ allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described case, 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 retaliated against them for filing a judicial complaint against another judge, harassed them, 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