

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90081

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

NOV 16 2021

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**


ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioners' complaint filed on July 27, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on August 24, 2021, and the petition for review filed by petitioners on September 27, 2021. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby **AFFIRMS** the disposition of this matter by Chief Judge Pryor. The petition for review is **DENIED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 24 2021

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90081

IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____

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").

As an initial matter, after Complainants filed their Complaint, they filed a
supplemental statement. The filing of the supplemental statement is permitted. *See* 11th
Cir. JCDR 6.7.

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 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.

In March 2020 Complainants filed additional motions requesting access to electronic filing, contending that requiring them to file in paper put them at risk of exposure to COVID-19 and was contrary to guidance issued by the government. The magistrate judge issued an order denying the motions, finding Complainants failed to establish they were entitled to an exemption from the general rule that *pro se* litigants were not permitted to file electronically. After additional 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 April 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; and (3) stating that a failure to appear at the hearing could result in the imposition of sanctions. In late April 2021, the magistrate judge issued an order denying three motions Complainants had filed, and the next month, Complainants filed an “Appeal/Objection” to the magistrate judge’s order. The hearing on the show cause order was held in July 2021. On July 23, 2021, a notice of a hearing was issued, and a telephone conference was held on July 27, 2021.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants allege the Subject Judge delayed ruling on their April 2021 Appeal/Objection to the magistrate judge’s order for more than two months with an improper motive to impede an appeal of a state court judge’s actions. They contend the delay has multiplied the proceedings and resulted in “judicial inefficiency.” Next, they allege the Subject Judge discriminated against and harassed them as “pro se of color” individuals by denying them access to electronic filing and failing to provide them an order via mail. They state that by not allowing them to file electronically, the Subject Judge put their lives at risk, and they assert the court “granted Caucasian pro se electronic filing without showing hardship.”

Complainants then allege the Subject Judge violated their due process rights by “not specifying the evidentiary nature” of the July 2021 hearing, which prevented them from calling witnesses. They also allege the Subject Judge falsely stated at the hearing that a final order had been issued in the case, and “went beyond the scope with facts” about irrelevant filings “to portray negative image” of one of the Complainants.

Complainants assert the “violations are with an improper motive of not only emotionally badger and financial ruin [Complainants] but it is also prejudicial to the administration of the business of the court by delaying the closing of the case.” In a footnote, they state the Subject Judge labeled them vexatious litigants in retaliation for them filing previous judicial complaints. They seek to incorporate by reference

allegations made in previous judicial complaints, and they attached documents to their Complaint.

Supplement

In their supplemental statement, Complainants contend that the denial of their request to file electronically caused a substantial and widespread lowering of public confidence in the courts, asserting court observers asked questions about it after the July 2021 hearing. They allege the Subject Judge never gave a reason for denying them access to electronic filing and that he denied them access “cold-hearted without humanity.” Complainants also allege the Subject Judge refused to provide the reasons for holding a telephone conference on July 27, 2021.

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 delayed the case with an improper motive, knowingly made false statements, discriminated against or harassed them, retaliated against them for filing a judicial complaint, 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