

CONFIDENTIAL

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

OCT 12 2021

**David J. Smith
Clerk**

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

Judicial Complaint No. 11-21-90084

IN THE MATTER OF A COMPLAINT FILED BY _____

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.

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 2021 Complainant filed a civil rights complaint against a police officer, alleging the defendant unlawfully searched his vehicle after falsely stating that the vehicle was parked illegally. He also filed a motion for leave to proceed *in forma pauperis* (IFP), and the Subject Judge entered an order granting the IFP motion and directing Complainant to file a recast complaint. Complainant then filed an amendment adding another defendant to the case. In April 2021 the Subject Judge issued an order dismissing the amendment for failure to state a claim against the new defendant and stating the initial complaint would proceed with Complainant’s Fourth Amendment claim against the police officer.

The record shows that in April 2021 Complainant filed a civil rights action against the same two defendants raising a claim of false imprisonment. In May 2021 the Subject Judge issued an order dismissing the complaint without prejudice for failure to state a claim and directing the clerk to consolidate the case with the first case. In the order, the Subject Judge: (1) noted that an incident report set out that marijuana was found in Complainant’s car and, after he was arrested, he stated he had smoked marijuana; (2) found that, because marijuana was discovered in his car, the officer had probable cause to arrest him; and (3) stated in a footnote that the officer also had arguable probable cause

and cited to a case that found an officer had arguable probable cause to arrest a plaintiff for honking his car horn in violation of a local noise ordinance.

Also in May 2021, Complainant filed another complaint that was docketed as a new case. The next month, the Subject Judge issued an order consolidating the new case with the first case and directing the clerk to reinstate the defendant that had been dismissed. Complainant's civil rights complaint from the case was then docketed as a supplemental complaint in the initial case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends the Subject Judge found he established the elements for a Fourth Amendment violation but then "did a complete 180" and found the officer had probable cause to arrest him. He states he informed the court that the arresting officer committed perjury by asserting he had been illegally parked and admitted to smoking marijuana.

Complainant then alleges the Subject Judge conspired with the officer and his attorney and showed favoritism toward the defendant when he "fabricated" that Complainant honked his horn in violation of a noise ordinance, when that was not in the incident report. Complainant also alleges the Subject Judge lied by stating he did not file a separate lawsuit. He included documents with 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 above-described cases, 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 part of a conspiracy, showed favoritism, fabricated facts or 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