

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 28 2021

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-21-90091**

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

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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.

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**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 September 2016 a federal grand jury issued an indictment charging Complainant with seven counts of distributing a controlled substance outside the usual course of professional practice and for other than legitimate medical purposes, in violation of 21 U.S.C. § 841(a)(1). The indictment also contained a forfeiture provision that included citations to subsection of 21 U.S.C. § 853, which is entitled “Criminal forfeitures.” After various proceedings, the case went to trial, and in June 2018 a jury found Complainant guilty as charged in the indictment.

At the sentencing hearing in September 2018, after Complainant’s attorney argued for a downward variance, the Subject Judge stated, “I think your client is a monster. I think your client knowingly and willfully profited on the addiction and the misery of others.” The Subject Judge later stated, “I stand by my statement that I believe your client is a monster, but not just a monster, an arrogant monster.” The Subject Judge ultimately sentenced Complainant to a total term of 235 months of imprisonment, which was the low end of his guideline range.

Complainant appealed, and in October 2020 this Court issued an opinion affirming his convictions and sentences. This Court held, among other things, that the Subject

Judge's statement that Complainant was an arrogant monster may have been harsh, but appropriately characterized the feeling of the community harmed by his misbehavior.

In March 2021 Complainant filed a motion to reduce his sentence pursuant to the First Step Act based on his "terminal medical condition." In May 2021 the Subject Judge issued an order denying the motion, finding in part that Complainant did not establish an extraordinary and compelling circumstance justifying release. The order stated that the indictment charged Complainant with seven counts of unlawfully distributing a controlled substance "in violation of 21 U.S.C. § 853(a)(1) and (2)."

Complainant filed a notice of appeal and a motion for leave to proceed *in forma pauperis* (IFP) on appeal. A magistrate judge issued a report recommending that the motion be denied, finding Complainant had not demonstrated that his issues on appeal were non-frivolous. In July 2021 the Subject Judge entered an order adopting the report and recommendation and denying the IFP motion. In setting out the background, the order quoted from the Subject Judge's previous order, including the statement that Complainant was charged with violating "21 U.S.C. § 853(a)(1) and (2)."

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge was biased and prejudiced against him, had a "personal financial bias," used "despicable, deceptive methods," was negligent, committed malpractice, and engaged in criminal behavior. Complainant asserts the Subject Judge's July 2021 order denying his IFP motion misrepresented a material fact by stating Complainant violated 21 U.S.C. § 853(a)(1) and (2), when he violated 21 U.S.C. § 841(a)(1). He asserts the statement caused a miscarriage of justice, that it was made with an improper motive, and that the Subject Judge intentionally increased the severity of his crime in an attempt to deceive this Court. He seeks multiple types of relief, and he attached documents to his Complaint.

In one attachment, Complainant alleges the Subject Judge: (1) showed bias against him by not allowing him to be called "\_\_\_\_\_" in court, by stating he was "arrogant," and by calling him a "monster" at sentencing while exhibiting a "mean face"; (2) acted with an improper motive; (3) "was oblivious to constitutional law and the rule of law"; (4) sought Complainant's conviction "at all costs" and sought to give him the maximum sentence; (5) "inflamed the jury" by granting a motion to forbid use of the phrase "Pill Mill" in closing argument; (6) did not allow his character witnesses to speak at sentencing; (7) tried to advance his career by prosecuting "high profile doctors" (8) was prejudiced against medical doctors, against Complainant because he was a "white Christian" male, and against his attorney because he was "an obvious homosexual"; and

(9) had “\_\_\_\_\_ political attitudes and thinking.” He also lists various rulings that he contends were errors that deprived him of a fair trial.

### 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 case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or prejudiced, acted with an illicit or improper motive, committed a crime, purposefully miscited statutory provisions, treated him in a demonstrably egregious and hostile manner, 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