

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90094

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

SEP 27 2021

David J. Smith  
Clerk

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

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IN RE: The Complaint of \_\_\_\_\_ against United States Magistrate 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 Magistrate 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 2020 Complainant filed a *pro se* complaint alleging the defendant violated his First Amendment rights by preventing him from appearing on television, made false statements about him, and harassed him. He also filed a motion for leave to proceed *in forma pauperis*. The Subject Judge then issued an order granting the IFP motion, stating that service of process would not issue at the time, and directing the clerk to submit the case to the court for a frivolity determination pursuant to 28 U.S.C. § 1915.

After that, Complainant filed two motions for default judgment. In November 2020 the district judge entered an order: (1) finding Complainant failed to provide sufficient factual allegations to support his claims; (2) additionally finding his First Amendment claim was frivolous; and (3) denying the motions for default judgment. Because Complainant was proceeding *pro se*, the order granted Complainant leave to file an amended complaint within 14 days. Complainant did not file an amended complaint, and in December 2020 the district judge issued an order dismissing the case without prejudice.

## Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states he believes the Subject Judge acted improperly in the case and is biased and prejudiced against *pro se* litigants. Complainant asserts the Subject Judge ordered the clerk not to issue the summons “in clear violation of the federal rules of civil procedure in the case,” which he believes to be evidence that the Subject Judge had improper conversations without his knowledge or consent. Complainant also contends the Subject Judge violated a rule by directing him to file a brief, which demonstrated impartiality. Finally, he states he did not consent to have the Subject Judge participate in the case, and he asserts the clerk’s office assigned the case to the Subject Judge without giving him written notice.

## 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, rulings, and order in the above-described case, 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 biased against *pro se* litigants, had improper conversations, was not impartial, 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