

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUL 12 2022

David J. Smith  
Clerk

CONFIDENTIAL

Before the Chief Judge of the  
Eleventh Judicial Circuit

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Judicial Complaint No. 11-22-90075

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, 28 U.S.C. §§ 351-364.

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**ORDER**

\_\_\_\_\_ (“Complainant”) has filed this Complaint against United States Magistrate Judge \_\_\_\_\_ ( “the Subject Judge”), under the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (“Judicial-Conduct Rules”).

As an initial matter, after Complainant filed his Complaint, he filed eleven supplemental statements. The filing of the supplemental statements is permitted. *See* 11th Cir. JCDR 6.7.

### **Background**

The record shows that in July 2021 Complainant filed a prisoner civil rights action against two defendants, and he later filed a motion for leave to proceed *in forma pauperis* (IFP). In August 2021 the Subject Judge entered an order granting the IFP motion and directing Complainant to file a recast complaint. Complainant filed a recast complaint the next month. After additional proceedings, Complainant filed an amended recast complaint. The defendants moved to dismiss the amended recast complaint, and Complainant responded in opposition. Complainant also filed a document that the Subject Judge construed as a motion for the appointment of counsel and denied.

The defendants then filed a motion for extension of time to file a reply in support of their motion to dismiss, and the Subject Judge granted the motion, giving the defendants until March 31, 2022, to file a reply. The defendants filed their reply on March 31, 2022. In April 2022 the Subject Judge issued a report recommending that the case be dismissed due to Complainant's failure to exhaust his administrative remedies. Over Complainant's objections, the district judge entered an order adopting the report and recommendation and dismissing the action for failure to exhaust administrative remedies. Complainant filed a notice of appeal and a

motion for the appointment of counsel, and the Subject Judge denied the motion for appointment of counsel.

### **Complaint**

Complainant alleges the Subject Judge showed favor to the defendants and denied him due process by issuing a report and recommendation without requiring a reply from the defendants, by allowing the defendants to defy his order granting them an extension of time to file the reply, by showing the defendants that Complainant was “not protected by” counsel, and by not appointing counsel to represent him. He also states that the Subject Judge erred by finding that he did not exhaust his administrative remedies. He attached documents to his Complaint.

### **Supplements**

In Complainant’s supplemental statements, in addition to reiterating his allegations, he repeatedly states that he never received a signed and dated version of the defendants’ March 2022 reply. He contends that the Subject Judge allowed the defendants to submit a late, backdated reply, failed to keep him properly informed, disregarded one of his claims, and engaged in a “set up” to have the case dismissed. In one supplement, Complainant appears to allege the Subject Judge retaliated against him for filing a judicial complaint. He also complains that the Subject Judge denied his motions to appoint counsel, and he raises allegations pertaining to individuals other than the Subject Judge.

## Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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, orders, and report and recommendation 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 showed favoritism toward the defendants, retaliated against Complainant, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.  
Chief Judge