

# United States Court of Appeals

Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303  
404-335-6577

David J. Smith  
Clerk of Court

[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

Amy C. Nerenberg  
Chief Deputy Clerk

January 27, 2021

## CONFIDENTIAL

Joanna Burke and John Burke  
46 Kingwood Greens Dr.  
Kingwood, TX 77339

Re: Judicial Complaint No. 11-20-90113  
In the Matter of a Complaint Filed by Joanna Burke and John Burke

Dear Joanna Burke and John Burke:

Enclosed is an order of Chief United States Circuit Judge William H. Pryor Jr. that has been filed in this office and is effective as of the date filed. This order determines the complaint of judicial misconduct or disability earlier filed by you pursuant to Title 28 U.S.C. §§ 351-364 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States. A redacted version of the order also is enclosed.

You and the subject judge have the right to petition the Eleventh Circuit Judicial Council for review of the disposition, as provided in Rule 18 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States and the accompanying Eleventh Circuit Judicial Conduct and Disability Rules.

Sincerely,

DAVID J. SMITH, Clerk of Court

Christian Kennerly, Deputy Clerk

Encl.

c: The Honorable Kenneth A. Marra

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-20-90113**

**IN THE MATTER OF A COMPLAINT FILED BY  
JOANNA BURKE AND JOHN BURKE**

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 27 2021

David J. Smith  
Clerk

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IN RE: The Complaint of Joanna Burke and John Burke against United States District Judge Kenneth A. Marra of the United States District Court for the Southern District of Florida, under the Judicial Conduct and Disability Act of 1980, Chapter 16 of Title 28 U.S.C. §§ 351-364.

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**ORDER**

Joanna Burke and John Burke (collectively "Complainants") have filed this Complaint against United States District Judge Kenneth A. Marra (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 April 2017 the Consumer Financial Protection Bureau filed an action against multiple defendants under the Consumer Financial Protection Act of 2010. After various proceedings, in January 2019 Complainants filed a motion to intervene in the case, noting they were the plaintiffs in a separate action filed against the defendants. In May 2019 the Subject Judge issued an order denying the motion to intervene, finding Complainants did not meet the requirements for intervention as of right and their request for permissive intervention failed because intervention would prejudice the parties and unduly delay the proceedings.

The next month, Complainants filed a motion for reconsideration, generally contending the Subject Judge erred in denying their motion to intervene. The Subject Judge denied the motion for reconsideration, noting that, in addition to the grounds stated in the previous order, intervention was not permitted to allow a party to seek or obtain evidence for other litigation. Complainants appealed, and this Court later affirmed the denial of their motion to intervene and motion for reconsideration.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants contend the Subject Judge lied and falsely stated that they could not intervene to obtain evidence for

other litigation, and that the finding was contrary to certain case law. They allege the Subject Judge was required to recuse himself from the matter due to a “personal and pervasive bias” against them. They also state there is a “strong argument” that the Subject Judge colluded with others “to ensure his written opinions would not be contradicted in any filing(s).”

### 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 orders denying their motion to intervene and motion for reconsideration, 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 Complainants challenge, they provide no credible facts or evidence in support of their claims that the Subject Judge lied, was biased against them, colluded with others, 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

CONFIDENTIAL

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90113

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JAN 27 2021

David J. Smith  
Clerk

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

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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.

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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").

Background

The record shows that in April 2017 the Consumer Financial Protection Bureau  
filed an action against multiple defendants under the Consumer Financial Protection Act  
of 2010. After various proceedings, in January 2019 Complainants filed a motion to  
intervene in the case, noting they were the plaintiffs in a separate action filed against the  
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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