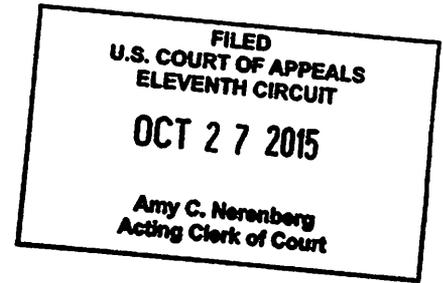


CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-15-90089



IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District Judge for
the U.S. 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”).

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of that supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that on June 9, 2015, Complainant filed a lawsuit against a _____ and a _____, and she moved to proceed in forma pauperis (IFP). The next day, she filed a motion for a preliminary injunction seeking to bar the enforcement of certain state criminal statutes, arguing that the statutes were unconstitutional. On June 16, 2015, the Subject Judge entered an order denying Complainant’s IFP motion because her affidavit of indigency was insufficient to allow the court to evaluate whether she was able to pay the filing fee, and because, in any event, her complaint failed to state a claim upon which relief could be granted. The Subject Judge also denied the motion for preliminary injunction as moot, and noted that if Complainant chose to refile her action and again seek injunctive relief, she was “cautioned that such vague references to harms will not suffice to obtain the relief sought.”

Complainant then filed a motion to reopen the case and a supporting brief in which she generally took issue with the Subject Judge’s order. Complainant also filed another motion to proceed IFP, which she later withdrew, noting that she would refile it if her motion to reopen was denied. On June 18, 2015, the Subject Judge denied the motion to reopen, finding that Complainant had failed to provide any basis for the court to reopen the case. The Subject Judge also “caution[ed]” Complainant that if she simply refiled her withdrawn IFP motion, it would be denied as inadequate. Complainant then filed a

motion in which she requested that the case be sealed or that her name be changed to “Jane Doe” in the caption, arguing that the record contained personal financial information and other information that could be prejudicial to her personally and professionally. The Subject Judge denied the motion to seal, finding that Complainant had failed to articulate good cause for the relief sought.

The record also shows that on June 19, 2015, “Jane Doe,” who was represented by Complainant, filed a lawsuit against the same _____ and _____, raising claims relating to her alleged unlawful prosecution and arguing that certain state criminal statutes were unconstitutional. In her complaint, the plaintiff took issue with the actions of a “Judge _____,” among others. The plaintiff, through Complainant, also filed a motion to proceed in the case as “Jane Doe,” a motion to certify the case as a class action, and a motion for a preliminary injunction seeking to enjoin the state from enforcing the challenged statutes. On June 23, 2015, the presiding district judge recused, and the case was reassigned to the Subject Judge.

On July 7, 2015, the plaintiff, through Complainant, filed a Motion to Recuse the Subject Judge in which she argued, among other things, that the Subject Judge: (1) was an unfair and partial trier of fact; (2) caused the State Bar to be notified about her lawsuit because the State Bar had engaged in threatening acts to influence her to withdraw her lawsuit; (3) in his June 16, 2015 order in the previous case, “literally communicated a threat to Jane Doe[’s] counsel” when he used terms like “caution,” which suggested that the lawsuit should be abandoned; and (4) was “intimidating, harassing, bullying, and abusive in his Orders, which knowingly and intentionally publishes financial information from financial affidavits known to be sealed and unavailable to the public.”

On July 16, 2015, the Subject Judge entered an order denying the plaintiff’s motion to proceed as Jane Doe, finding that she had failed to articulate good cause to proceed under a pseudonym. The Subject Judge stated that if the plaintiff wished to maintain the action, she was directed to identify herself and to file an amended complaint reflecting her name within 15 days. Also on July 16, the Subject Judge denied the Motion to Recuse, finding that the motion did not comply with the statutory requirements and that, in any event, it did not establish a basis for recusal. The Subject Judge determined, among other things, that any fair and reasonable reading of the court’s prior orders reflected no personal animus, prejudice, or extrajudicial bias, the Subject Judge had no personal interest in the outcome of the case, and no reasonable observer would question the Subject Judge’s impartiality in the case. The docket entry for the order states, “Entered: 07/17/2015.”

On July 17, 2015, the plaintiff, through Complainant, filed another Motion to Recuse the Subject Judge, generally arguing that he had violated the Code of Conduct for United States Judges, exhibited bias against the plaintiff and Complainant and in favor of the defendants, engaged in improper communications, threatened Complainant, made false statements and misrepresented facts, violated criminal statutes, and was influenced by his political views. On July 23, 2015, the Subject Judge denied the second Motion to

Recuse, finding that the accusations in it were “baseless.” After that, the plaintiff filed a motion for reconsideration of the order denying her motion to proceed as Jane Doe, which the Subject Judge denied.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first lists various types of misconduct that she believes the Subject Judge engaged in, and she asserts that the Subject Judge violated the Code of Conduct and “several criminal statutes.” Complainant alleges that the Subject Judge exhibited “a total and reckless disregard for justice, his oath of office and ability to fairly administer justice without regard to race or gender,” and she asserts that he “has demonstrated that he will violate the civil rights of the litigant based on race and gender and his political affiliations.” She later states that the Subject Judge’s decisions are controlled by his “political views of being a Republican appointed by a Republican Former President.” She asserts that the Subject Judge “has viewed and considered Jane Doe and her counsel’s legal pleadings harsher than he has her white counterparts even to the extent of falsifying his filings on July 17, 2015.” She contends that he should be recused from her case because he is not impartial and has an interest that could be substantially affected by the outcome of the proceedings.

Complainant states that the Subject Judge “demonstrated that his agenda throughout the litigation involving Jane Doe has been and will continue to be to subject her to shame, humiliation, embarrassment, public ridicule and contempt by intentionally, purposefully and maliciously disclosing her personal financial information.” Complainant states that the Subject Judge’s “warnings and cautions demonstrates an unfair and partial trier of fact who has prejudged the merits of the case,” and she contends that he “tried on numerous occasion[s] to force” Complainant to choose between advancing her claim or facing “public ridicule, shame, humiliation and embarrassment concerning her financial status and the events surrounding the constitutional challenges.”

Complainant then complains that the Subject Judge considered certain filings while a Motion to Recuse was pending. She alleges that the docket entry stating that the Motion to Recuse was denied on July 16, 2015 was false because the order was “prepared, signed and entered on July 17, 2015.” She asserts that the Subject Judge “knowingly made false representations,” “grossly” misrepresented the entry date of an order, and gave a false statement concerning the “submission, signing and entrance of the July 17th order.”

Complainant contends that the Subject Judge should have recused himself in light of his relationship with the defendants and his law school classmate “Judge _____ . . . whose acts are the subject of this litigation.” Complainant states, “The parties have entertained together, know each other’s families and have endorsed each other’s legal careers. He also has relationships with several of the lawyers on the case and those in _____ County.” Complainant states that on or about June 16, 2015, the Subject Judge

“had direct contact or caused contact with Judge _____ of the _____ County circuit considering the claims raised by Jane Doe in her federal case” She asserts that on July 10, 2015, the Subject Judge “contacted or caused to be contacted the office of” the defendants “to advise their lawyers that they needed to file answers to the motions.” Finally, she alleges that the Subject Judge “contacted or caused to be contacted the State Bar of _____, Office of General Counsel with a copy of Jane Doe’s federal filing.”

Supplement

In her supplemental statement, Complainant contends that after the Subject Judge was notified of her “initial complaint,” he filed a copy of her “notice/complaint as a ‘pleading’ in the case, which is threat[en]ing to me and suggestive.” She states that the Subject Judge dismissed her “complaint (litigation) after I contacted this office concerning his filing of the notice/complaint.” Complainant then states that the Subject Judge sent an order on “late Friday, September 4 — before Labor Day weekend, which purportedly” gave her until September 9 to amend her complaint. Complainant states, “Because I did not get it until after holiday break — which he knew — I thought it was for filing no later than the 19th; Surely, no ethical judge would give less than 3 business day notice for filing.”

Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

Rule 3(h)(3)(A) 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 power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action 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, and orders entered in the 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 with which Complainant takes issue, she provides no credible facts or evidence in support of her allegations that the Subject Judge acted with an illicit or improper motive, threatened Complainant by filing a copy of her “notice/complaint as a ‘pleading’ in the case,” 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**.

A handwritten signature in black ink, appearing to read "J. L. Warner", is written over a horizontal line.

Chief Judge