

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 13 2015

Amy C. Nerenberg
Acting Clerk of Court

Judicial Complaint Nos. 11-15-90121 and 11-15-90122

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 Magistrate Judge _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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 in March 2014 Complainant filed a complaint against the _____, a _____, and a _____, and she filed a motion to proceed in forma pauperis (IFP). She then filed a “Motion for an Emergency Order for SSDI and SSI,” which Judge _____ denied, explaining that the unwarranted designation of a motion as an emergency could result in sanctions. In April 2014 Complainant filed another Motion for an Emergency Order for SSDI and SSI.

In May 2014 Judge _____ entered an order taking Complainant’s IFP motion under advisement and finding that her complaint did not establish that the court had jurisdiction and did not sufficiently state a claim on which relief could be granted. Judge _____ gave Complainant the opportunity to file an amended complaint correcting the deficiencies. Judge _____ also denied Complainant’s Motion for an Emergency Order for SSDI and SSI, again advising her that the unwarranted designation of a motion as an emergency could result in sanctions.

Complainant then filed, among other things, a second amended complaint against the three defendants. In October 2014 Judge _____ entered an order finding that Complainant's claims against the _____ and her claims against the doctor and hospital could not be joined in a single lawsuit. Judge _____ stated that if Complainant wanted to proceed with her claim against the _____, she must file a third amended complaint against that defendant or pay the filing fee. Later that month, Complainant filed a third amended complaint against the _____. Judge _____ then granted Complainant's motion to proceed IFP. In December 2014 the _____ filed an answer to the complaint, and Judge _____ issued a scheduling order. In January 2015 Complainant filed a "memorandum," stating that she was appealing the _____ decision denying her _____. In February 2015 the _____ filed a "memorandum" in response.

The record also shows that in October 2014 Complainant filed a separate lawsuit in federal district court, raising claims of medical battery and medical malpractice against a doctor and a hospital. She moved to proceed IFP. In December 2014 Judge _____ entered an order taking the IFP motion under advisement, finding that Complainant had not provided sufficient information for the court to determine whether it had jurisdiction, and directing her to file an amended complaint or pay the filing fee. Although she had filed the lawsuit in federal court, Complainant filed a motion and then an amended motion to remand the case to state court.

In January 2015 the district judge entered an order directing Complainant to show cause why the case should not be dismissed for lack of subject matter jurisdiction. After that, Complainant filed a notice of voluntary dismissal, and the district judge entered an order dismissing the case without prejudice. In September 2015 Complainant filed a motion to vacate that order and to reinstate the case. The district judge construed that as a motion for reconsideration and denied it on multiple grounds.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that she has been "treated in a manner that reflects hostility," and that there "appears to be an improper motive in delaying a decision" in her case against the _____. Complainant contends that Judge _____ statements that the unwarranted designation of a motion as an emergency motion could result in the imposition of sanctions "reflect[ed] a level of hostility" given that she was experiencing health problems. She states that she "feel[s] that there is an improper motive in delaying a decision" in her case, given that the Subject Judges were "aware of [her] dire situation," her motions have been denied, and the case has been in the federal court for 18 months. Complainant attached various documents to her Complaint.

Supplement

In her supplemental statement, Complainant states that, with respect to her lawsuit against the doctor and hospital, the attorney for the doctor is “affiliated” with a certain law firm and that an associate at that firm served as a judicial extern for Judge _____. Complainant questions whether there is a “direct association of” the law firm “with the two Judges that had a direct influence on the outcome of” her case against the doctor. Complainant questions why Judge _____ was “permitted to sit in Judgment” in both of her federal cases. Finally, she mentions proceedings that occurred in the state court. She attached various documents to her supplemental statement.

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 Judges’ official actions, findings, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judges’ 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 claims that the Subject Judges treated her with hostility, acted with an improper motive in delaying a 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 "E. L. Ames", written in a cursive style.

Chief Judge