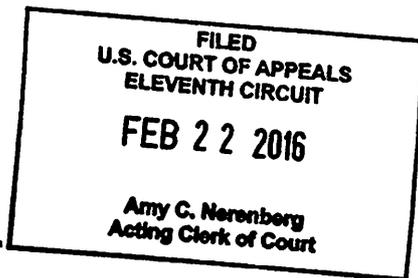


CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT



Judicial Complaint Nos. 11-15-90161 and 11-15-90162

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Circuit Judges _____ and _____ of the U.S. Court of Appeals for the _____ Circuit, 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 Circuit Judges _____ and _____ (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”).

Background

The record shows that in June 2012 Complainant filed in the United States District Court for the District of _____ a pro se complaint raising various claims against her employer. The case later was transferred to the United States District Court for the _____ District of _____. After that, the parties filed cross-motions for summary judgment. In January 2015 a magistrate judge issued a report recommending, among other things, that the defendant’s motion for summary judgment be granted and that Complainant’s be denied, generally finding that the defendant was entitled to judgment as a matter of law. The next month, the district judge adopted the report and recommendation, granted the defendant’s motion for summary judgment, and denied Complainant’s motion for summary judgment. Complainant appealed.

In June 2015 this Court clerically dismissed the appeal for want of prosecution because Complainant failed to file her brief and appendix within the time fixed by the rules. Complainant then filed a “Motion to Set Aside Dismissal, Reinstate Appeal and Remedy Default” and a “Motion for waiver and exception of filing requirements.” In July 2015 a two-judge panel comprised of the Subject Judges entered an order denying the motion to waive filing requirements and denying the Motion to Set Aside Dismissal without prejudice to her filing within 14 days a motion to reinstate the appeal accompanied by an initial brief and appendix that were in compliance with the rules. Complainant filed a motion for reconsideration, and in October 2015 the Subject Judges

denied the motion and again provided Complainant with 14 days to file a motion to reinstate the appeal accompanied by a brief and appendix in compliance with the rules.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that she is filing her Complaint “due to ongoing malice and retaliation including by way of judicial bias of this matter” Complainant generally takes issue with the processing of her case, alleging there was “inappropriate management and oversight of [her] case at the judicial level,” and she generally complains that there has not been a hearing or “unbiased” consideration of her pleadings. Complainant notes that she “requested suspension of the rules regarding filing procedures” due to her lack of resources, and she states, “The merits of my case are indisputable which is why bias and apparent e part [sic] communications are requested by the defendant from the court.” She asserts that she has endured, among other things, “abuse of authority” and “harassment due to [her] pro se status,” and she raises other allegations that do not appear to relate to actions by the Subject Judges. Complainant requests reinstatement of her appeal and oral argument.

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’ orders entered in Complainant’s appeal, 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 allegations that the Subject Judges were biased against her, retaliated against her, engaged in improper ex parte communications, 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**.



Chief Judge