

MAR 30 2016

Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-16-90004 and 11-16-90005

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 the supplemental statement is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in October 2015 Complainant filed an amended complaint against two defendants raising various allegations. A magistrate judge issued a report recommending that Complainant’s federal claims be dismissed with prejudice for failure to state a claim on which relief could be granted and that her state law claims be dismissed without prejudice. Over Complainant’s objections, in November 2015 Judge _____ entered an order adopting the magistrate judge’s report and recommendation, dismissing the federal claims with prejudice, and dismissing the state law claims without prejudice. Complainant then filed a notice of appeal and a motion to proceed in forma pauperis (IFP) on appeal. On December 31, 2015, Judge _____ denied the motion to proceed IFP on appeal, certifying that the appeal was not taken in good faith.

The record also shows that in October 2015 Complainant filed a complaint against a police department, and she later filed motion for leave to proceed IFP. After various amendments, she ultimately filed a fourth amended complaint against the police department and an officer, generally alleging that the defendants violated her rights and

asserting that the officer tampered with film evidence of her arrest. In November 2015 Judge _____ entered an order and report in which he granted Complainant's IFP motion but recommended that the case be dismissed without prejudice for failure to state a claim on which relief could be granted. Over Complainant's objections, in December 2015 Judge _____ adopted the report and recommendation and dismissed the case without prejudice.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that on December 31, 2015, Judge _____ "may have fals[el]y denied [her] pauperis rights." Complainant then alleges that the Subject Judges allowed officers to cover up certain matters, and she contends that Judge _____ obstructed justice by finding that a case was frivolous. Complainant then appears to allege that Judge _____ engaged in racial discrimination, took part in a malicious prosecution, "allowed mutilation of film," endangered Complainant by not expediting her cases, and allowed the "destruction" of Complainant's career through "racism and gender based violence." Complainant also appears to raise allegations against individuals who are not federal judges.

Supplement

In her supplemental statement, Complainant states that there is "radical extremism" in the "judicial system" in _____ and another state "allowing gender based violence." She then appears to allege that Judge _____ and another judge are taking part in a "counter extremist movement to destroy" Complainant's career and in an "antisemitic [sic] racist conspiracy to knowingly allow civil disorder." She alleges that Judge _____ knowingly allowed the alteration and destruction of evidence. Complainant also raises allegations against individuals who are not federal judges.

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, reports, 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 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. J. Amer", written over a horizontal line.

Chief Judge