

CONFIDENTIAL

JUL 25 2016

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint Nos. 11-16-90043 and 11-16-90044

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”).

Background

The record shows that in May 2014 Complainant filed a lawsuit against three defendants alleging, among other things, that she had been falsely arrested, maliciously prosecuted, and subjected to police brutality. She paid the filing fee. The next month, Judge _____ issued a report recommending that the case be dismissed without prejudice. The report stated that Complainant was “an abusive *pro se* filer” who had “commenced yet another facially frivolous lawsuit,” and noted that if she filed objections to the report, she should also show the district judge “why protective measures should not be undertaken against her” because “a federal court cannot exist as a public resource if the malicious and mentally imbalanced are permitted to bombard it with absurdities.” Over Complainant’s objections, a district judge, who is not one of the Subject Judges, adopted the report and recommendation, and the case was dismissed.

Complainant appealed that judgment, which this Court vacated, remanding the case for further proceedings and holding that the complaint was not “facially frivolous” because Complainant had alleged at least one claim with an arguable basis in law or fact. This Court also stated that Complainant should be afforded a reasonable opportunity to amend her complaint. After that, Judge _____ entered an order directing Complainant to file an amended complaint. In August 2015 Complainant filed a motion for an extension of time to file the amended complaint, which Judge _____ granted,

and in November 2015 she filed another motion for an extension to time, which Judge _____ granted, providing her until January 15, 2016 to file her amended complaint.

On January 11, 2016, Complainant filed a motion in which she, among other things, sought a continuance until she was “released from being falsely incarcerated.” A few days later, Judge _____ denied the motion to the extent Complainant sought to re-serve certain subpoenas that had already been served, but he extended by 90 days the time for service under Fed. R. Civ. P. 4(m). In mid-April 2016 Judge _____ issued a report recommending that the case be dismissed without prejudice due to Complainant’s failure to comply with Rule 4(m) as directed by the court’s previous order. Over Complainant’s objections, Judge _____ adopted the report and recommendation, and the case was dismissed.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ committed misconduct and abused his discretion in his June 2014 report and recommendation by failing to provide her with an opportunity to have an evidentiary hearing and by stating that she was “mentally imbalanced.” Complainant alleges that in January 2016 Judge _____ committed misconduct and abused his discretion by “denying [her] reasonable time to pursue” her case. She contends that in April 2016 Judge _____ committed misconduct by failing to give her an opportunity to pursue her case and “not protecting [her] as an In Forma Pauperis Plaintiff.”

Complainant states that she “know[s]” the Subject Judges are prejudiced against her because she is an “African American wom[a]n protected under Title 5 U.S.C. 552a.” She alleges that Judge _____ has been prejudiced against her in every lawsuit that she has filed in the district court and that he will not let any of her cases proceed without issuing a report recommending dismissal of the case. She states that she believes the Subject Judges are conspiring against her along with “county officials because of [her] title under Title 5 U.S.C. 552a.” Complainant states that the Subject Judges “are not willing to follow the law,” and that they are “very prejudice and racist against African Americans protected by the federal government like” Complainant.

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 case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges were prejudiced against her, are prejudiced against African Americans, were part of a conspiracy, 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