

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 01 2017

David J. Smith
Clerk

CONFIDENTIAL

**BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT**

Judicial Complaint No. 11-17-90026

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”).

Background

The record shows that in July 2016 Complainant filed a pro se civil rights complaint against multiple defendants raising various claims. A couple of days later, the Subject Judge entered an order striking the complaint because it was “utterly incomprehensible.” Complainant filed an amended complaint, generally alleging that the defendants violated her Constitutional rights. After various proceedings, in December 2016 the Subject Judge entered an order dismissing three defendants without prejudice, noting that Complainant had stated that she was financially unable to perfect service of process upon them.

The next month, the case was referred to mediation. The Subject Judge entered an order noting that the mediator had retired and that a new mediator would be appointed after the resolution of pending motions. In March 2017 the Subject Judge denied a motion for injunctive relief that Complainant had filed, finding that she had failed to comply with the procedural or substantive requirements for such relief.

The record also shows that in August 2016 Complainant filed a pro se amended civil rights complaint raising claims against multiple defendants. After various proceedings, in January 2017 Complainant filed a motion to set aside a “void” state court judgment pursuant to Fed. R. Civ. P. 60(d)(3), alleging that the defendants had committed a fraud upon the court in connection with the judgment.

Several days later, the Subject Judge entered an order denying the motion, finding that Rule 60(d)(3) did not provide the court with authority to set aside a judgment entered by another court. In February 2017 Complainant filed a motion to set aside a state court judgment pursuant to Rule 60(b)(4). The Subject Judge denied the motion, finding that Rule 60(b)(4) did not provide the court with authority to relieve a party from a judgment entered by another court.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in “criminal and fraudulent” conduct in the two cases described above. Complainant generally complains that she has been unable to obtain relief in federal court, and she takes issue with the processing of and rulings on various motions. She states that discovery and mediation were “blocked” by the Subject Judge and the defendants “on some nonsensical grounds without any basis in law or fact in violation of constitutional due process.”

Complainant asserts that the Subject Judge and unnamed magistrate judges: (1) “work closely together with” defendants named in pro se complaints and their “unlicensed” lawyers, “setting in motion some unconscionable scheme calculated to interfere with the federal judicial system’s ability to adjudicate pro se claims”; and (2) “are utilizing various schemes of fraud on the court” to “unfairly hamper[]” the presentation of pro se litigants’ claims. In a footnote, Complainant contends that the defendants would be in default if the Subject Judge was fair and impartial. She then asserts that the Subject Judge suffers from “some mental and or physical disability” rendering her unable to discharge the duties of her office.

Complainant states that the Subject Judge “refused to set aside a void state judgment as void” as she was required to do, and considered motions and affirmative defenses by “unlicensed” lawyers. Complainant alleges that the defendants have engaged in “long-running ongoing criminal and fraudulent” conduct, and that “it appears” the Subject Judge “is actually facilitating Defendants after the fact.” She asserts that the Subject Judge’s “fraudulent conduct” undermines public confidence in the judiciary and creates an appearance of impropriety, and that the Subject Judge engaged in misconduct outside the performance of her official duties.

Complainant then discusses the merits of one of her cases, alleges that the defendants engaged in fraud, and contends that the Subject Judge and her staff “promote these kinds of frauds on the court in support of unlicensed government lawyers and private lawyers under color of federal law, instead of referring those federal crimes to proper federal law enforcement.” Finally, Complainant states, “The fact that [the] [S]ubject [J]udge and her racist staff, who treat an entire segment of the population as the enemy, rather than as citizens deserving of equal protection of law and fair and impartial

treatment in court, lack the integrity to serve as Article III Judge and law clerks” of the district court.


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, rulings, 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 claims that the Subject Judge 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