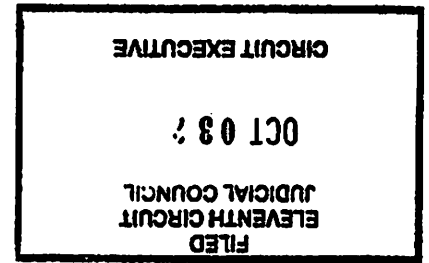
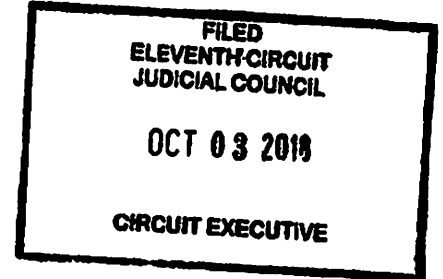


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111790063



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**



ON PETITION FOR REVIEW*


Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes filed on 12 July 2018, and of the petition for review filed by the complainant on 9 August 2018, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 12 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90063

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 November 2015 Complainant, an attorney, filed a second amended complaint in the United States District Court for the District of _____ against: (1) the _____ (“_____”), a _____ and _____; (2) _____, president of the _____ in April 2012; and (3) _____, former vice president of the _____ and _____ law partner. Complainant alleged, among other things, that: (1) in April 2012 she attended an event hosted by the _____ in _____, where she and _____ were drugged and raped; (2) she was drugged and raped by attorney _____; and (3) _____, _____, the _____, and others conspired to cover up the rapes by destroying evidence after she sought to have the _____ prosecute the rapists. Complainant also alleged that _____ and _____ were friends with _____, the _____, and _____, the _____. She raised claims of negligence, gross negligence, intentional infliction of emotional distress, and conspiracy.

In September 2016 the case was transferred to the United States District Court for the _____ District of _____. Later that month, the defendants filed a motion to stay the proceedings, noting that Complainant was challenging the transfer order in circuit court, and the Subject Judge granted the motion. In March 2017 the Subject Judge granted a motion to reopen that Complainant had filed. After that, Complainant filed a motion for partial summary judgment, which the Subject Judge denied as premature. The Subject Judge also entered an order directing the defendants to respond to the second

amended complaint. Complainant filed a motion to appoint counsel, which the Subject Judge denied without prejudice, finding that she failed to demonstrate exceptional circumstances warranting the appointment of counsel. In May 2017 the defendants filed motions to dismiss the second amended complaint.

The next month, Complainant filed a motion for leave to file a third amended complaint, seeking to add additional defendants, claims, and factual allegations. Among other things, Complainant sought to include _____ as a defendant and alleged that _____ bribed _____ with a campaign donation so that _____ would use _____ power over the _____ and the _____ to cover up the rape. In July 2017 the Subject Judge entered an order granting in full the _____ and _____ motions to dismiss, granting in part _____ motion to dismiss, and denying Complainant's motion to file an amended complaint. With respect to the negligence claims, the Subject Judge found that Complainant failed to state a claim against the _____ and _____, but that those claims could proceed against _____. The Subject Judge determined that the intentional infliction of emotional distress and conspiracy claims failed as to all defendants because Complainant did not allege facts sufficient to infer that they were liable for any misconduct.

With respect to Complainant's motion to file a third amended complaint, the Subject Judge found that she demonstrated no good reason for the significant delay in adding defendants and claims to the action, and the factual allegations she sought to add did not overcome the deficiencies in her second amended complaint. The Subject Judge specifically found that: (1) "_____ donation to the _____ Party of _____ does not support an inference that he bribed _____ to cover up Plaintiff's rape . . ."; and (2) even if the donation reached _____, Complainant had "not alleged facts to indicate that _____ had any involvement with the investigation of [Complainant's] rape complaint, or even that _____ had any interaction with _____ or the _____ [_____] detectives assigned to [Complainant's] case during the relevant timeframe." The Subject Judge allowed Complainant one final opportunity to amend her complaint by adding factual allegations in support of the claims the court had dismissed.

After that, Complainant filed a Motion for Recusal of the Subject Judge in which she stated:

According to Judge _____ campaign website, potential defendant, _____ encouraged Judge _____, _____ to replace _____ as _____ of _____. According to a confidential witness with close personal ties to Judge _____, _____ quit _____ job because _____ promised _____ all the support (financial donors and manpower) _____ needed to win the _____ position. In exchange for _____ support of his _____, _____ expects Judge _____ to shield _____ from any liability for

accepting bribes and conspiring with _____ to cover up the drug rapes of myself and _____.

Complainant alleged that, because the Subject Judge was biased against her and was “being corruptly influenced,” he refused to allow her to bring claims concerning the unlawful cover up of the rapes. She also alleged that an unnamed individual who had a close personal relationship with the Subject Judge stated, among other things, that the Subject Judge “would never go against _____ because he really wants _____ to win and _____ could stop that.”

Several days later, the Subject Judge entered an order granting the Motion for Recusal, stating, “Although there is no basis to [Complainant’s] allegations, the undersigned will recuse himself from further involvement in this action so as to avoid even the appearance of impropriety.” In September 2017 Complainant filed a motion to voluntarily dismiss the case in which she reiterated her allegations against the Subject Judge and generally argued that she was unable to receive a fair hearing in the district court. In October 2017 a district judge granted the motion to the extent that the case was dismissed.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that “_____ is corruptly influencing [the Subject Judge] to rule in _____ favor in [Complainant’s] case in exchange for _____ providing his _____ the support _____ needs to replace _____ as _____.” Complainant states that “_____, _____, the _____, and others conspired with former _____ and current _____, former _____, and other law enforcement officials to corruptly cover up the drug rapes of [Complainant] and _____ that began in _____ hotel suite.” Complainant states that “_____, _____, _____, _____ and the _____ all stood to gain from covering up the drug rapes,” and that the conspiracy involved “alter[ing] and destroy[ing] a recorded confession of the rape to silence” Complainant.

Complainant then alleges that: (1) _____ “has a pattern and practice of accepting campaign donations and other gifts in exchange for official acts from those who can help _____ rise politically”; and (2) “_____ gave _____ an urgent campaign donation to compensate for _____ assistance in influencing _____ to cover up the drug rapes of [Complainant] and _____.” Complainant then states that _____ campaign website shows that _____ and _____ are friends and that _____ supports _____ campaign to become _____. Complainant states that “Witness A, who has a close personal relationship with [the Subject Judge] provided supporting evidence of [the Subject Judge’s] bias towards” Complainant. She asserts that “Witness A” stated:

“ _____ would never go against _____ because he really wants _____ to win and _____ could stop that. _____ quit _____ job because _____ promised _____ what _____ needed to win. _____ gets what _____ wants out here. _____ is a witch. It does not matter to _____ who got raped or who did what. _____ got to look out for his _____. _____ does not have to talk to _____ about a case against _____. _____ would expect _____ to take care of _____ in return for what _____ is doing for his _____. That’s how the good ole boys network in _____ works.”

Complainant states that she will disclose the identity of “Witness A” only if an investigation is ordered into her complaint against the Subject Judge.

Complainant contends that the Subject Judge “refuses” to allow her to bring any claims against _____ and _____ for their wrongdoing. She states:

Because _____ is providing [the Subject Judge’s] _____ with the support (financial donors and man power) _____ needs to win the _____ position, [the Subject Judge] is expected not to “go against” _____, as Witness A phrases it, for accepting bribes and conspiring with _____ to cover up the drug rapes of myself and _____.

In a footnote, Complainant states that she believes she is “being set up by all potential defendants and their counsel,” and that the defendants, “potential defendants,” and their counsel “have always been fully aware of _____ plans to use [the Subject Judge] to harm me in exchange for his _____ political rise.”

Complainant cites to a June 2017 newspaper article which states that: (1) current _____ stated that _____ supports _____ in _____ campaign to become the next _____ in 2018; and (2) _____ is U.S. District Judge _____.

Limited Inquiry

Rule 11(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States requires the Chief Judge to review complaints of judicial misconduct or disability and determine what actions should be taken on them. See JCDR 11(a). Rule 11(b) provides in part that:

In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may

communicate orally or in writing with the complainant . . . and may obtain and review transcripts and other relevant documents.

JCDR 11(b); see also 28 U.S.C. § 352(a). In conducting the limited inquiry, the Chief Judge “must not determine any reasonably disputed issue.” JCDR 11(b). However, dismissal of a complaint is appropriate “when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.” 28 U.S.C. § 352(b)(1)(B).

In April 2018 I sent Complainant a letter requesting that she provide, before the close of business on April 25, 2018, the name of and contact information for the individual she identified as “Witness A.” The letter informed Complainant that if she did not provide the identity of “Witness A,” I would have to proceed as if that person does not exist. To date, Complainant has not responded to my letter. Therefore, the alleged statements by “Witness A” lack any factual foundation.

Discussion

Rule 3(h)(1) provides that cognizable misconduct “is conduct prejudicial to the effective and expeditious administration of the business of the courts.” Under JCDR 3(h)(1)(A), cognizable misconduct includes “using the judge’s office to obtain special treatment for friends or relatives.”

Rule 3(h)(3)(A) 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 Complainant’s case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge used his office to obtain

special treatment for friends or relatives, was biased against Complainant, 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 "S. Kramer", is written above a horizontal line.

Chief Judge