

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 12 2018

David J. Smith
Clerk

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

Judicial Complaint No. 11-18-90030

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”).

As an initial matter, after Complainant filed her Complaint, she filed two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in September 2016 Complainant filed a “Class Action Complaint” against a company, raising four counts under the Telephone Consumer Protection Act. The next month, the defendant filed a motion to dismiss the case, and Complainant filed a response in opposition. In January 2017 the Subject Judge issued an order denying the defendant’s motion to dismiss and striking one count of the complaint as redundant. Later in January 2017, the defendant filed an answer to the complaint, and the next month, the defendant filed a motion for summary judgment. After various discovery-related proceedings, in October 2017 Complainant filed a motion for partial summary judgment as to two counts, and a motion to amend her complaint to raise a wiretapping claim.

On February 14, 2018, the Subject Judge issued an order that, among other things: (1) granted in part and denied in part the defendant’s motion for summary judgment, finding it was entitled to summary judgment as to two of the remaining three counts; (2) denied Complainant’s motion for partial summary judgment; (3) denied Complainant’s motion to amend her complaint; and (4) directed that Complainant must move to establish a deadline to move for class certification. The next month, Complainant filed a

notice stating that the parties had reached a settlement and were finalizing the settlement documents.

After that, the Subject Judge granted a motion to omit a footnote from the summary judgment order, vacated the order, and issued a superseding order omitting the footnote. The Subject Judge also issued an order dismissing the case in light of the parties' settlement. In June 2018 the parties stipulated to the dismissal of the case with prejudice, and the Subject Judge dismissed the case with prejudice.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states she is filing her Complaint against the Subject Judge "for violation of the Judicial Rules of Conduct (Canon 2 and 3) for misstating facts in his February 14 Order, and perhaps being swayed by big business" Complainant then sets out various statements the Subject Judge made that she claims were inaccurate or contradicted by the record, and she contends that his statements proved that he was prejudiced against her and hindered her right to a fair trial.

Complainant also complains that the Subject Judge allowed the defendant to request her cell phone records and confidential medical records, which were not related to the case, "yet could jeopardize [her] well being and safety, once again proving prejudice and [her] not having a fair trial." Finally, Complainant states that the Subject Judge allowed the defendant "to waste the Court's time with excessive Motions."

Supplements

In her first supplemental statement, Complainant reiterates her allegations, and she attached various documents related to the merits of her case. Complainant's second supplement appears to be an email to her attorneys in which she states that the Subject Judge and the defendant's attorneys made false statements and caused a miscarriage of justice.

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, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, she provides no credible facts or evidence in support of her claims that the Subject Judge was prejudiced against her, was “swayed by big business,” violated the Code of Conduct for United States Judges, made false statements, 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