

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

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

MAY 06 2020

David J. Smith
Clerk

Judicial Complaint No. 11-19-90111

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ of the United States 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 _____ (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 May 2018 Complainant filed in state court a counseled amended complaint against a company, alleging that the company had negligently allowed a defective product to cause her injury, and the defendant removed the case to federal court a couple of months later. The defendant then filed a motion to dismiss the amended complaint, and Complainant filed a motion to remand to state court.

In August 2018 the Subject Judge issued a report recommending that Complainant’s motion to remand be denied, finding that the defendant had shown the amount in controversy exceeded \$75,000. The district judge adopted the report and recommendation and denied the motion to remand. The next month, the Subject Judge issued a report recommending that the defendant’s motion to dismiss be granted in part and denied in part and that Complainant’s amended complaint be dismissed with leave to amend because it was a “shotgun pleading” and failed to state a claim. The district judge adopted the report and recommendation and dismissed the amended complaint with leave to amend.

After that, Complainant, through counsel, filed a second amended complaint, asserting claims of negligence, negligence per se, and negligent misrepresentation. The defendant filed an answer as to the negligence count and moved to dismiss the two remaining counts. In December 2018 the Subject Judge issued a report recommending

that the motion to dismiss be granted and that the claims of negligence per se and negligent misrepresentation be dismissed with prejudice for failure to state a claim on which relief could be granted. Later that month, the district judge entered an order adopting the report and recommendation and dismissing with prejudice two counts of the amended complaint.

In March 2019 the defendant filed a motion for summary judgment. Complainant's attorney then filed a motion to withdraw, stating in part that irreconcilable differences had arisen between Complainant and him, and the Subject Judge granted the motion. In April 2019 Complainant filed a pro se motion in which she sought video recordings and transcripts of her deposition and alleged that her attorney had kicked her and had demanded that she lie during her deposition. She also filed a motion for an order directing her former attorney and his staff members not to contact her.

Also in April 2019 the Subject Judge issued an order denying Complainant's motion for production of the deposition video and transcripts, stating that litigants are responsible for obtaining such material from the court reporter. The Subject Judge also entered an order denying as moot Complainant's motion concerning her former attorney because the court had entered an order terminating the attorney's representation. The Subject Judge then issued an order directing Complainant to file a response to the defendant's motion for summary judgment. After that, Complainant filed an affidavit in which she took issue with the actions of her former attorney and the Subject Judge's order denying her motion for production.

In late April 2019 the district judge entered an order dismissing the case without prejudice, finding that Complainant did not respond to the defendant's motion for summary judgment as she had been ordered to do and noting that her affidavit could not be construed as a response. The next month, Complainant filed four documents taking issue with the actions of her former counsel and seeking various types of relief. In June 2019 the district judge entered an order striking the documents because they were irrelevant to the closed case and failed to respond to the motion for summary judgment. Complainant filed a motion to reopen, an affidavit, and a "Motion Fraud Upon the Court," and the district judge entered an order striking those filings.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge committed fraud upon the court, acted outside the scope of his authority, violated her rights, failed to address her allegations of fraud, and was biased and prejudiced against her. Complainant takes issue with actions of her former attorney, and she alleges the Subject Judge "unlawfully awarded every filing" by her former attorney and "work[ed] with" her former attorney to deny her requests for relief. She also appears to allege the Subject Judge concealed unlawful actions, had a conflict of interest,

and violated his oath of office. She attached various documents to her Complaint, including documents in which she alleges the Subject Judge refused to provide her material she needed for her case, was biased against her, and obstructed her ability to obtain relief.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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, reports, 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 committed fraud upon the court, was biased against her, worked with her former attorney, had a conflict of interest, violated his oath of office, 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