

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

JUL 07 2021

Judicial Complaint No. 11-21-90033

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY
_____ AND _____

IN RE: The Complaint of _____ and _____ 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

_____ and _____ (collectively “Complainants”) have 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 September 2019 Complainants filed an amended *pro se* civil rights action against multiple defendants raising claims stemming from certain state court proceedings, and the defendants filed motions to dismiss the amended complaint. The next month, Complainants filed a motion for leave to file electronically, and the Subject Judge entered an order denying the motion, stating that *pro se* litigants were afforded sufficient access to the court through paper filing. Complainants then filed a motion to remove a certain claim from a pending state court proceeding to federal court, and two defendants filed a motion to remand the matter to the state court. After that, the Subject Judge granted two motions to withdraw the claims against certain defendants that Complainants had filed.

In January 2020 the Subject Judge issued a report recommending, among other things, that the defendants’ motions to dismiss be granted, the amended complaint be dismissed without leave to amend, Complainants’ removal motion be denied, and the motion to remand be granted in part and denied in part. The Subject Judge found that: (1) the *Rooker-Feldman* doctrine precluded review of Complainants’ claims; (2) to the extent the doctrine did not apply, the court should not interfere with the ongoing state court proceedings pursuant to the *Younger* abstention doctrine; (3) the claims against judicial defendants should be dismissed on the basis of judicial immunity; (4) Eleventh

Amendment immunity provided an additional basis to dismiss the claims against the judicial defendants; (5) the amended complaint failed to state a claim on which relief could be granted as to all defendants and failed to state a claim for injunctive relief; and (6) the amended complaint was an impermissible shotgun pleading. With respect to Complainants' removal motion, the Subject Judge found it was "improper for several reasons," and found that motion to remand should be denied in part to the extent it requested attorney's fees for Complainants' improper removal.

Over Complainants' objections, in February 2020 a district judge entered an order adopting the report and recommendation and directing the clerk to close the case. After that, Complainants filed multiple motions seeking various types of relief, including motions to recuse the Subject Judge and renewed motions for access to the court's electronic filing system, which the Subject Judge denied. In April 2020 the district judge issued an order directing Complainants to show cause as to why they should not be sanctioned for frivolous filings and harassment of court personnel.

In February 2021 certain defendants filed a joint emergency motion seeking to remand the case to the state court in response to a notice of removal Complainants had filed with the court, and seeking to enjoin Complainants from requesting further relief without the court's or an attorney's approval. On February 19, 2021, the Subject Judge issued an order denying the motion, stating there was nothing to remand because the notice of removal had resulted in a new case being opened and that the instant case remained closed. On the same day, the Subject Judge entered an order vacating her previous order, and the district judge issued an order consolidating the case with the new case that had been opened, granting the joint emergency motion to the extent it sought remand, and remanding the case to state court.

Complainants then filed in the case a notice of removal of a state court case to federal court based on "new evidence," and the district judge remanded the case to state court, finding the notice of removal contained no new evidence that changed the court's previous orders. On March 1, 2021, Complainants filed a motion for relief from the district judge's February 19, 2021, order, and, a few days later, they filed an amended motion for relief, alleging the court was without jurisdiction to enter the order in a closed case. The Subject Judge later denied the motion for relief for failure to comply with court rules and failure to establish entitlement to the relief sought. In April 2021 the Subject Judge issued two orders striking motions Complainants had filed because the motions contained personally identifying information and medical information. There has been additional activity in the case.

Complaint

In their Complaint of Judicial Misconduct or Disability, Complainants, one of whom is a doctor and both of whom are "Asian minority," allege the Subject Judge acted

with an improper motive and conspired with the district judge to vacate her February 19, 2021, order denying the defendants' motion to remand the case, which jeopardized one of the Complainants' medical license and livelihood. Complainants state the Subject Judge vacated her order 24 minutes after it was issued and without providing any reason so that the district judge could remand the closed case when the Subject Judge knew their notice of removal was a "new case with new violations." They contend the only inferences that can be drawn from the Subject Judge changing her order in 24 minutes are that she: (1) did not know "what was right or wrong (judicial disability)"; or (2) was influenced by and conspired with the district judge and a state court judge to discriminate and retaliate against the minority Complainants. They also allege the Subject Judge acted with malice to retaliate against them for reporting or disclosing misconduct.

Next, Complainants allege one of their filings was not docketed and their March 1, 2021, motion for relief was missing 20 pages, and they assert the Subject Judge acted with an improper motive in refusing to grant them access to the electronic filing system. Complainants state, "The inference can be drawn that their filings were purposely blocked and tampered with so [the Subject Judge] can control what goes on the docket . . ." They also complain the Subject Judge ordered that two of their motions be stricken for including personal identifying information "when the markers were de-identified." Complainants contend that two inferences can be drawn from these actions: (1) the Subject Judge did not understand the rules about personal identifying information; or (2) she wanted to "dupe" the Complainants who were not native English speakers so their filings could be deleted. Finally, Complainants state the Subject Judge acted with a "discriminatory animus with the unlawful goal to favor white attorneys" and "harassed and disfavored" them. They attached various documents to their Complaint.

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 Complainants' allegations concern the substance of the Subject Judge's official actions, findings, rulings, orders, and report in the above-described case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainants' remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, discriminated or retaliated against Complainants, was part of a conspiracy, suffered from a disability, harassed Complainants, blocked or tampered with their filings, 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**.

/s/ William H. Pryor Jr.

Chief Judge