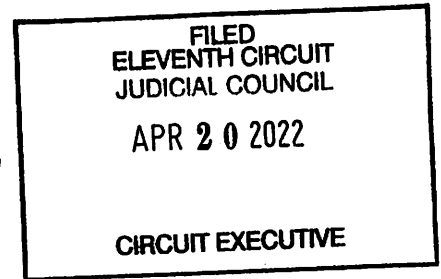


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-21-90155



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


ON PETITION FOR REVIEW

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges;
COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered petitioner's complaint filed on December 15, 2021, the order of Chief United States Circuit Judge William H. Pryor Jr. filed on January 31, 2022, and the petition for review filed by petitioner on February 28, 2022. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

JAN 31 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-21-90155

IN THE MATTER OF A COMPLAINT FILED BY:

IN RE: The Complaint of _____ against United States District
Judge _____ of the United States District Court for the
_____ District of _____, under the Judicial Conduct and
Disability Act of 1980, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States District Judge _____ (“the Subject Judge”), un-
der the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct
and Judicial-Disability Proceedings of the Judicial Conference of
the United States (“Judicial-Conduct Rules”).

Background

The record shows that February 2019 Complainant filed in a federal court in _____ an employment discrimination lawsuit against a defendant. She also filed a motion for leave to proceed *in forma pauperis*, which a magistrate judge granted. In December 2019 the case was transferred to the United States District Court for the _____ District of _____, and in January 2020 the case was reassigned to the Subject Judge as the presiding district judge.

Complainant then filed a motion seeking injunctive relief, which the Subject Judge denied. Complainant appealed the decision, and this Court later granted a motion for summary affirmance. In May 2020 the defendant filed a motion for judgment on the pleadings, and that same month, the Subject Judge granted the motion and entered a judgment in favor of the defendant. Complainant filed a motion for reconsideration, which the Subject Judge denied. Complainant appealed.

In February 2021 this Court vacated and remanded for additional proceedings, finding the Subject Judge erred in using a certain evidentiary standard at the pleading stage and abused his discretion by dismissing the action without first providing notice of the complaint's deficiencies and an opportunity to amend.

In April 2021 the Subject Judge entered an order directing Complainant to file an amended complaint, and Complainant filed an amended complaint the next month. In June 2021 the defendant filed a motion to dismiss the amended complaint. The next month,

Complainant filed a “Motion to Amend Unanswered Amended Complaint.” In August 2021 the Subject Judge entered an order granting the motion, directing Complainant to file a second amended complaint within 5 days of the date of the order, and directing the defendant to file a response within 14 days of the filing of the amended complaint.

On August 6, 2021, Complainant filed a second amended complaint, and on August 23, 2021, the defendant filed a motion to dismiss the complaint. Complainant then filed a motion for a default judgment in which she argued she had electronically served the defendant with the second amended complaint on August 4, 2021, and the defendant therefore had failed to file a timely response. In late August 2021, the Subject Judge denied the motion for a default judgment, finding the defendant’s motion to dismiss was timely filed. The Subject Judge also entered an order denying the defendant’s earlier motion to dismiss as moot.

In September 2021 Complainant filed a motion for reconsideration as to the order denying her motion for a default judgment, again contending the defendant’s motion to dismiss was untimely. The next day, the Subject Judge entered an order granting the motion for reconsideration and again denying the motion for default judgment. The order stated that (1) the defendant had appeared and defended the case for more than two years; (2) regardless of whether the motion to dismiss was timely or 3 days late, the deadline for filing a responsive pleading was not a bright-line deadline; (3) Complainant had not shown that she was prejudiced; and (4)

the court would decide the case on the merits. Complainant filed a notice of appeal and a motion to stay briefing, and the Subject Judge granted the motion to stay.

In November 2021 this Court dismissed the appeal for lack of jurisdiction, and the order was issued as the mandate. After that, the Subject Judge issued an order directing Complainant to file a response to the motion to dismiss and an order lifting the stay. In December 2021 Complainant filed an “Acknowledgement of Order” in which she stated she could not comply with the order directing her to file a response to the motion to dismiss because the motion was untimely. The Subject Judge then issued an order (1) finding Complainant had willfully failed to comply with a court order; (2) stating the court was “no longer willing to tolerate [Complainant’s] delay tactics”; and (3) dismissing the case without prejudice for failure to comply with the court’s order. Complainant filed a motion for reconsideration, which the Subject Judge denied.

Complaint

Complainant alleges the Subject Judge engaged in a “pattern of delays,” “kept the docket in a state of suspended progress” since April 2021, and “dragged out the pre-trial process.” She contends the Subject Judge waited until she requested a second opportunity to amend her claims and then dismissed as moot “months of replies and sur-replies.” Complainant states the Subject Judge ordered her to amend her complaint within 3 days, but gave the defendant 14 days to respond. She states that in a series of rulings, the Subject Judge changed the reasons why the defendant’s late motion to

dismiss was acceptable and provided reasons that did not comport with the Federal Rules of Civil Procedure. Complainant then lists what she contends are a “pattern of prejudicial rulings” and she alleges the Subject Judge “assumed the role of both opposition and presiding judge” and could not be considered independent in the case.

Next, Complainant alleges the Subject Judge “interfered with the appeal process,” arguing the appellate proceedings did not follow “standard operating procedure.” She complains the Subject Judge dismissed her claims before her request for reconsideration was ruled upon by this Court and required her to respond to the defendant’s late-filed motion to dismiss. She states that, to justify dismissal, the Subject Judge referred to Complainant’s pattern of delays, but only cited her appeal and her refusal to answer an “unlawfully accepted” motion in support.

Complainant alleges the Subject Judge failed to rule on certain matters raised in her second amended complaint and instead “ruled for dismissal as if the ordered response to the untimely answer was the only way to establish the merits of [her] claims,” which was “an unadulterated mockery of the judicial process.” Complainant contends the Subject Judge acted in the role of the defendant in response to her challenges to the late-filed motion to dismiss and that he dismissed the case “for causes entirely concocted by him.” Finally, she asserts the Subject Judge was “overtly antagonistic” and “create[d] reasons to dismiss procedurally and

substantively sound claims for relief.” She attached documents to her Complaint.

Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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.

Furthermore, Judicial-Conduct Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” states that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the

correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described 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 acted with an illicit or improper motive, was not impartial, treated her a demonstrably egregious or hostile manner, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge