

MAR 15 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-22-90017 and 11-22-90018

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 _____ and United States Circuit Judge _____ of the United States Court of Appeals for the _____ Circuit, 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 _____ and United States Circuit Judge _____ (collectively, “the Subject Judges”), under 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 in January 2008 Complainant filed an amended employment discrimination complaint against his former employer, and after various proceedings, the case was reassigned to Judge _____. In May 2009 the defendant filed a motion for summary judgment, arguing in part that Complainant could not establish that the legitimate reasons proffered for his termination were pretextual. The defendant attached as an exhibit, among other things, an “Employee Termination Report” dated “1-23-2006,” which noted that Complainant’s last day worked was “11-12-06.”

In October 2009 Complainant filed a motion for leave to file a second amended complaint, and Judge _____ denied the motion, finding it was untimely and would unduly prejudice the defendant. Complainant then filed a motion to recuse Judge _____ in which he alleged that statements she previously made to a newspaper—including that race and gender had not been impediments in her career—were “derogatory” and brought her impartiality into question. In late October 2009 Judge _____ denied the motion to recuse, finding Complainant failed to establish a basis for her recusal.

In November 2009 Judge _____ entered an order granting the defendant’s motion for summary judgment. Judge

_____ found that Complainant failed to show the defendant's legitimate, non-discriminatory reason proffered for his termination was pretextual. Complainant appealed, and in June 2011 a panel of this Court that included Judge _____ affirmed the district court's grant of summary judgment in favor of the defendant, Appeal No. _____.

The record also shows that in 2005 a panel of this Court that included Judge _____ issued a *per curiam* opinion affirming in part and reversing in part a district court's orders entered in an employment discrimination action involving allegations of racial discrimination, Appeal No. _____. This Court (1) held in part that use of the term "_____" when modified by a racial classification was evidence of discriminatory intent, but that use of the term alone was not evidence of discrimination; and (2) quoted a previous case for the proposition that pretext could be established through comparing qualifications only when the disparity in qualifications was so apparent "_____."

In 2006 the United States Supreme Court vacated this Court's opinion. The Supreme Court determined that this Court erred (1) by holding that modifiers or qualifications were necessary in all instances to render the term "_____" probative of bias; and (2) in articulating the standing for determining whether asserted nondiscriminatory reasons for hiring decisions are pretextual.

Complaint

Complainant alleges Judge _____ “demonstrated a consistent tendency to remain adversarial against the African American community and hostile to the enforcement of their rights.” He states that in “this case,” Judge _____ “personally went out of his way to wait until the actual anniversary of the infamous fraudulent date being cited in the case.” Complainant asserts Judge _____ is not impartial, “has taken the matter personally,” and “has in some bitter vindictive fashion decided to do a retaliation of his own.” Complainant then asserts that the defendant in his employment discrimination case fraudulently altered the date of an incident of racial hostility, and that Judge _____ “shamelessly and sadistically adopted” the “fraudulent date.”

Complainant asserts Judge _____ motive stemmed from the above-described Supreme Court decision reversing this Court’s opinion. He then states that Judge _____ “witnessed Judge _____ seeing signatures that are not there, draft dates that do not exist and an altered event date to support a false defense narrative.” He then appears to take issue with certain findings Judge _____ made, asserting Judge _____ changed facts to fit a certain narrative and was “emotionally biased.”

Complainant attached to his Complaint an 8-page document titled “Citizen Complaint Judicial Disability,” following by various exhibits. In the 8-page document, Complainant asserts that Judge _____ suffered from a “dyscalculic disability” or engaged in “personal misconduct ‘under color of law.’” He alleges Judge _____ used her office “to enact blatant fraud on behalf of a

corporation,” and committed fraud by, among other things, changing the date of an event to support the corporation’s narrative. He states Judge _____ “took refuge behind this systemic firewall of institutional racism.” Complainant then asserts that Judge _____ made a statement that race and gender have not been an impediment in her career, which he contends was inappropriate and derogatory. Complainant also contends that Judge _____ inappropriately referred to one of his witnesses as his girlfriend.

Previous Judicial Complaint

In August 2018 Complainant filed a Complaint of Judicial Misconduct or Disability against Judge _____, No. _____. That Complaint contained the exact same 8-page document titled “Citizen Complaint Judicial Disability” and the same exhibits that are attached to the current complaint. In January 2019 Judge _____ dismissed Complaint No. _____ on the grounds that it was merits-related and based on allegations lacking sufficient evidence to raise an inference that misconduct occurred or that a disability existed. Complainant did not file a petition for review and the matter is closed.

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.

In addition, the “Commentary on Rule 4” provides:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those repeated allegations and address only allegations that have not previously been considered. *See* Judicial-Conduct Rule 11(c)(2).

All of Complainant's allegations concerning Judge _____ have previously been considered in connection with Complaint No. _____. To the extent Complainant's allegations concern the substance of Judge _____ order dismissing Complaint No. _____ and the opinions issued in Appeal Nos. _____ and _____, the allegations are directly related to the merits of Judge _____ decisions or procedural rulings. Apart from the decisions or procedural rulings Complainant challenges, his claims are based on allegations lacking sufficient evidence to raise an inference that Judge _____ acted with an illicit or improper motive, is racially biased, was not impartial, engaged in retaliation, changed facts, 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