

CONFIDENTIAL

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

Judicial Complaint No. 11-15-90148

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.**

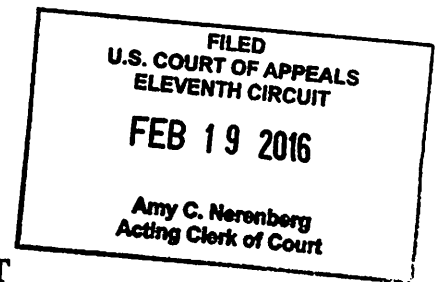
ORDER

_____ (“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”).

Background

The record shows that in January 2014 Complainant filed an amended pro se complaint against a company, raising a claim of discriminatory failure to hire. Although Complainant had requested a jury trial in his initial complaint, he did not do so in his amended complaint. In August 2014 the defendant filed a motion for summary judgment. In December 2014 a magistrate judge issued a report recommending that the defendant’s motion for summary judgment be denied. Later that month, the case was reassigned to the Subject Judge as the presiding district judge, and she was the third district judge who had been assigned to the case. Over the defendant’s objections, in March 2015 the Subject Judge adopted the report and recommendation with modifications, and denied the defendant’s motion for summary judgment.

At a pretrial conference in September 2015, the Subject Judge first noted that Complainant had not requested a jury trial in his amended complaint, and that while she had discretion to allow a jury trial, she thought it was “too late.” The Subject Judge stated that she knew that Complainant wanted a jury trial, but noted that trying cases before a jury was “a very difficult thing for an attorney even who does this work day in, day out.” The Subject Judge also stated that the “case will go much more smoothly in term of presentation of the evidence” if the case was not before a jury, and that she “had recently a pro se trial, let me just say, that if something goes wrong in the evidence, I can stop and we can fix it and I can explain things easily to you. If I have a jury here, I can’t do that so easily.” After hearing from the parties on the issue, the Subject Judge



determined that she would not allow “the amendment to add the jury trial.” At the end of the conference, the Subject Judge stated that it was good to meet Complainant and good to see counsel for the defendant again. The Subject Judge noted, “She was here on another case in the last -- last week, so that’s why I came back and I said, oh, deja vu.” After the hearing, Complainant moved for reconsideration of the denial of his request for a jury trial, and the Subject Judge denied the motion for the reasons stated at the pretrial conference.

In October 2015 a bench trial was held before the Subject Judge, and Complainant appeared pro se at trial. At the beginning of trial, there was no discussion of an opening statement, and neither party gave an opening statement. Later, Complainant stated that he was under the impression that he would give an opening statement, and the Subject Judge responded that an opening statement was not evidence. She also stated, “That’s why I didn’t, didn’t see any need, because I’ve read everything in the case. I’m going to certainly allow you to do a closing statement, but, but the closing statement, any statement that’s equivalent to what you might give to a jury or to me isn’t evidence.” The Subject Judge later informed Complainant that he could relay in his own testimony the information he wanted to include in his opening statement.

On the second day of trial, at the end of the presentation of evidence, the Subject Judge provided Complainant with an opportunity to present argument. During Complainant’s closing argument, the Subject Judge interjected and asked questions at a few points. At one point, the Subject Judge stated, “I think I was very patient today. I worked on my patience after not being sufficiently patient yesterday, in my own judgment, because I’m normally a very patient person.” At the end of trial, the Subject Judge ruled in favor of the defendant, finding that Complainant did not carry his burden to show that the legitimate, non-discriminatory reasons for the defendant’s actions were pretextual. In January 2016 the Subject Judge entered an order finding that Complainant had not carried his overall burden of proving his discrimination claim, and that, alternatively, he was not entitled to relief because he provided false information in his employment application.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that at the pretrial conference in September 2015, the Subject Judge stated that Complainant “would have no jury trial because Pro Se litigants do not do well in front of juries and that [his] case in particular would confuse the jury and waste too much time.” Complainant states that after the pretrial conference, the Subject Judge “informed the parties nice seeing them but, she made it clear that she had worked with the defendant’s attorney the previous week, as though they were friends which gave the appearance of impropriety.”

Complainant states that at the beginning of trial, the Subject Judge did not allow Complainant to make an opening statement, which prevented him from explaining the “order of evidence presentation.” He contends that during direct and cross-examination, the Subject Judge “repeatedly interrupted” Complainant, “confused the issues,” and “interfered in the examinations.” He states that the Subject Judge “harshly” reprimanded him about being unprepared in connection with an incident involving the placement of an exhibit sticker. Complainant states that, after witness testimony, the Subject Judge reprimanded him by informing him that he had not proven anything. Complainant states that the Subject Judge “failed to realize that when she denied [Complainant] an opportunity to present an opening statement that she wouldn’t be able to hear [his] story of the evidence and be able to connect the evidence with the story.”

Complainant states that “[d]uring 95% of the trial the judge kept her head bowed down to her bench, when she looked up at [Complainant] she would occasionally frown and snap verbally at him and sometimes at the defendant, but mostly at [Complainant].” He states that on the first day of trial, the Subject Judge “informed the defendant that, ‘you might just prevail in this case, you need to bring one witness.’ The defendant later brought one witness.” Complainant also states that on the second day of trial, the Subject Judge informed everyone that she had been very impatient the day before and was trying to be patient. He states that although the Subject Judge allowed him to make a closing argument, she did not allow him to make a rebuttal argument, and he states that he was “afraid” to ask for one.

Complainant asserts that the Subject Judge’s “demeanor was very, very unprofessional,” and that she “seemed to be mentally unstable and very angry and impatient.” Complainant then sets out his “theory” that the Subject Judge was “angry at the Pro Se litigant because his case was transferred between three district court judges,” and that she “resented acquiring” the case after other judges had “rejected” it. Complainant asserts that the Subject Judge “felt the case was dumped on her because of her lower seniority status which in turn made her resent the innocent Pro Se litigant,” and caused her to dispose of the case “as quickly as possible.”

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, findings, rulings, and orders entered in the 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 support an inference that the Subject Judge treated Complainant in a demonstrably egregious and hostile manner, was unprofessional, was “mentally unstable,” or otherwise engaged in misconduct. Although Complainant may have perceived some of the Subject Judge’s conduct to be demonstrably egregious and hostile, the challenged statements and actions reflected a proper exercise of her authority to maintain control over her docket and courtroom. See Reese v. Herbert, 527 F.3d 1253, 1263 (11th Cir. 2008) (recognizing courts’ “inherent power to manage the conduct of litigation before” them). Complainant has not shown that the Subject Judge made any improper statements or engaged in any actions that constituted 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**.

A handwritten signature in black ink, appearing to read "S. A. [unclear]", written over a horizontal line.

Chief Judge