

DEC 21 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90077 and 11-16-90078

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judge _____ of 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 Magistrate Judge _____ and United States District Judge _____ (collectively, “the Subject Judges”), 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”).

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in March 2015 Complainant filed a civil rights action against multiple defendants raising discrimination and defamation claims. Complainant later filed a fifth amended complaint raising various claims. In June 2016 Judge _____ issued a report recommending that Complainant’s federal claims be dismissed with prejudice for failure to state a claim on which relief could be granted, and that her state law claims be dismissed without prejudice. The next month, Judge _____ adopted the report and recommendation and dismissed Complainant’s claims. After that, Complainant filed objections to the report and recommendation, which Judge _____ denied. Complainant filed a motion to recuse the Subject Judges, for appointment of counsel, and to reopen the case, and Judge _____ denied the motion.

The record shows that in October 2015 Complainant filed an amended complaint against two defendants raising various allegations. The next month, Judge _____ issued a report recommending that Complainant’s federal claims be dismissed with prejudice for failure to state a claim on which relief could be granted, and that her state

law claims be dismissed without prejudice. Over Complainant's objections, a district judge, who is not one of the Subject Judges, adopted the report and recommendation and dismissed the claims. This Court clerically dismissed Complainant's appeal for want of prosecution.

The record also shows that in April 2016 Complainant filed a third amended complaint raising various allegations against one defendant. In July 2016 Judge _____ issued a report recommending that the complaint be dismissed with prejudice for failure to state a claim on which relief could be granted. Over Complainant's objections, Judge _____ adopted the report and recommendation and dismissed the complaint with prejudice.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant appears to allege that the Subject Judges "illegally" dismissed one of her cases to "promote illegal frame upps [sic]" and "antisemitism." She also states that the Subject Judges "are knowingly promoting genocide of [Complainant's] race and defamation."

Supplement

In her supplemental statement, Complainant appears to allege that Judge _____ is "taking part in conspiracy and race wars," and she states that Judge _____ "does not understand" one of Complainant's cases.

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 Judges' findings, reports, and orders entered in the cases, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, she provides no credible facts or evidence in support of her claims that the Subject Judges 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