

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

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David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90044 and 11-17-90045

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 his Complaint, he filed a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in June 2015 Complainant, through his attorney _____, filed an amended complaint against multiple companies, raising a claim of retaliation under Title VII of the Civil Rights Act of 1964 and a breach of contract claim. Complainant alleged, among other things, that he was retaliated against after supporting someone who complained about sexual discrimination. In April 2016 the defendants filed a “Motion to Enforce Settlement,” arguing that the parties had reached a settlement agreement and that it should be enforced.

On the same day, _____ filed a “Motion to Establish Attorney’s Charging Lien” in which he requested that the court order the settlement amount be paid into the court’s registry and that he be permitted to collect his fee from the proceeds. _____ also filed a motion to withdraw as Complainant’s attorney, stating that after Complainant had accepted the settlement, he changed his mind and instructed _____ to request more money, which _____ refused to do. The next day, Judge _____ granted

_____ motion to withdraw but directed the clerk to continue providing him with notification of docket activity because he still had an interest in the proceedings.

In June 2016 Judge _____ issued a report recommending that the defendants' Motion to Enforce Settlement be granted and that _____ Motion to Establish Attorney's Charging Lien be granted in part and denied in part. Judge _____ found that the parties entered into a settlement agreement with certain terms, and he recommended that the defendants be ordered to deposit the settlement proceeds in the court's registry. Complainant filed a motion for the court to order _____ to return his client file and amendments to the motion asking the court to forbid _____ from submitting any further filings in the case. Complainant also filed objections to Judge _____ report and recommendation.

In January 2017 Judge _____ entered an order adopting Judge _____ report and recommendation, granting the defendants' Motion to Enforce Settlement, granting in part and denying in part _____ Motion to Establish Attorney's Charging Lien, and denying Complainant's motion to return the case file. Judge _____ found that the parties had reached a settlement with certain terms. She ordered the defendants to deposit the settlement proceeds in the court's registry and found no prejudice to Complainant in allowing _____ to retain the case file until his fees were paid. Judge _____ noted that Judge _____ relied on "e-mails between counsel and uncontroverted affidavits regarding settlement discussions that occurred post-mediation to find that the parties had reached a settlement." The docket sheet indicates that the order was mailed to Complainant.

Later that month, Complainant filed a Motion to Recuse Judge _____, document _____, arguing that she violated his due process rights by, among other things, refusing to provide him with her order, denying him access to his client file, relying on filings from _____ who was a non-party, and not holding the defendants accountable for failing to pay a "Business Owners Policy (BOP) claim." Complainant also filed a notice of appeal as to Judge _____ order. After that, _____ filed a "Motion for Disbursement of Attorney Funds," requesting that the court authorize the release of money to satisfy his charging lien. Complainant objected to the motion, arguing that the court improperly relied on _____ filings because he had not intervened in the case, and asserting that the court knew _____ had lied to the court and tampered with evidence. In an objection docketed as document _____, he reiterated that Judge _____ should recuse herself from the case.

In March 2017 this Court rescinded the briefing schedule on appeal because there was a tolling motion in the district court. In May 2017 Complainant filed in the district court a motion for the court to rule on documents _____ and _____. Judge _____ then entered an order directing Complainant and _____ to file supplemental briefing on the issue of whether the court had jurisdiction to disburse funds

from the registry while the appeal was pending. In mid-May 2017 Complainant filed a "Motion to Recuse and Response to Retaliatory Document," seeking the recusal of the Subject Judges and alleging that Judge _____ retaliated against him for filing a Complaint of Judicial Misconduct or Disability against the Subject Judges. Later that month, Judge _____ entered an order denying Complainant's motion and _____ Motion for Disbursement, both without prejudice. In August 2017 Judge _____ entered an order denying Complainant's Motion to Recuse, document _____, and his motion for the court to rule.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ refused to rule on his motions seeking her recusal to avoid admitting that she was "blatantly biased against" him, and intentionally did not notify him of her January 2017 order. He also contends that the court intentionally delayed ruling in the case, retaliated against him, and violated his due process rights. Complainant then generally takes issue with the substance of Judge _____ January 2017 order, contending that she: (1) failed to discuss a "fee-split" agreement between Complainant and his attorney, which was "another example" of her bias against him; (2) admitted that the facts and law supported him but ruled in favor of the other party because she was biased; (3) erred in determining there was an amendment to the settlement agreement; (4) erred in ruling that he should not have a copy of his client file; and (5) intentionally denied him access to materials to prevent him from filing documents on appeal. Complainant asserts that Judge _____ order discourages individuals from coming forward about sexual improprieties in the workplace, and he alleges that the order "violated the Judicial Canons on every topic."

Complainant also alleges that the court erred and showed bias by considering filings submitted by _____ after he had withdrawn as Complainant's attorney, and that the court "intentionally did not take notice" that the content of _____ affidavit differed from other evidence in the case. Complainant asserts the court knew that _____ had lied to the court and had been caught tampering with evidence. Finally, Complainant states that the court erred "by permitting or colluding with Appellees in order to continue retaliation on an innocent Appellant by Appellees and a possible District Court."

Supplement

Complainant's supplemental statement includes the May 2017 Motion to Recuse and Response to Retaliatory Document that he filed in the case. In that document, Complainant generally sought the recusal of the Subject Judges and alleged that Judge _____ retaliated against him for filing a Complaint of Judicial Misconduct or Disability against the Subject Judges.

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’ official actions, findings, rulings, reports, and orders entered in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judges were biased against him, retaliated against him, acted with an illicit or improper motive, 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**.



Chief Judge