

MAR 19 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90061

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 2016 Complainant filed in state court a lawsuit against the _____ raising claims against her former medical school, including a claim of discrimination on the basis of disability. In March 2016 the defendant removed the case to federal court. In September 2016 counsel for the defendant filed a motion to withdraw, and the Subject Judge granted the motion. Two months later, the Subject Judge referred the case to mediation. The record shows that the Subject Judge continued mediation on two joint motions to extend the mediation deadline.

In February 2017 the defendant filed a motion for summary judgment, and Complainant filed a response in opposition. The next month, the defendant filed a motion for leave to file a reply to Complainant’s response, which the Subject Judge granted. After that, counsel for the defendant filed a motion to withdraw, which a magistrate judge granted. A week later, the defendant filed a reply to Complainant’s response. Complainant filed a motion for leave to file a surreply, which the Subject Judge granted. The mediator then issued a report stating that the parties had reached an impasse.

In April 2017 the Subject Judge entered an order granting the defendant’s motion for summary judgment, finding that two of Complainant claims had been abandoned, and on the remaining claims the defendant was entitled to judgment as a matter of law. Complainant filed a motion for reconsideration. She also filed a motion to recuse the Subject Judge, arguing that he had a “potentially significant conflict of interest as a

member for _____ and Chair of the _____.” She also listed various alleged factual errors in the Subject Judge’s order.

A couple of days later, the Subject Judge denied the motion for reconsideration and motion to recuse. With respect to the motion to recuse, the Subject Judge found that no reasonable observer would question his impartiality because he had not served on any board or committee for the _____ for more than 17 years and had no involvement with the _____ medical school. With respect to the motion for reconsideration, the Subject Judge found that Complainant had reargued many of the points made during the summary judgment proceedings, none of her exhibits to the motion constituted newly discovered evidence, and none of the exhibits persuaded the court that its earlier order was clearly in error or manifestly unjust.

After that, the defendant filed a motion to tax costs against Complainant, and Complainant filed a response in opposition. In mid-May 2017, Complainant filed a motion to supplement the record on appeal with her interrogatory responses, arguing in part that they established that the defendant had made factually inaccurate statements. The Subject Judge entered an order partially granting the defendant’s motion to tax costs. In June 2017 the Subject Judge denied Complainant’s motion to supplement the record, determining that the court could not grant the motion because her interrogatory responses were not a part of the record when the court entered summary judgment.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge: (1) engaged in misconduct by “prematurely and ‘strategically’ terminat[ing] the case without an opportunity for trial”; (2) had “potential involvement with Defendant or her former counsel (i.e. conspiracy) to terminate” the case and to preserve the defendant’s reputation; and (3) “strategically ignored relevant facts and even ‘created facts’ to terminate” the case. Complainant states that the Subject Judge formerly was on the “_____ and advisor for _____.” She asserts that the Subject Judge “accepted (‘fraudulently aided’) numerous substitutions” of the defendant’s counsel and “strategically allowed calculated resignations,” noting that counsel changed three times in an approximately six-month period.

Complainant alleges that the Subject Judge “recklessly and with negligence” denied all of her motions, committed a criminal act by denying her motion to supplement the record on appeal, “strategically allowed” the defendant and “corrupt former counsel” to delay the case “due to conflict of interest situation,” and “fraudulently aided” the extension of discovery and mediation. Complainant asserts that the Subject Judge falsified material facts, issued “inflammatory” and “nonsensical” orders that were “fraudulent with malice intent,” subjected her to “financial and emotional duress,” and aided the defendant in defaming her and destroying her career. She asserts that the Subject Judge “[d]id not even care” that she was losing earnings and in financial distress.

She states that the Subject Judge “may have had inside information” that would have caused the defendant to lose at trial, but that, “due to conspiracy,” he prematurely terminated the case. Finally, she takes issue with the actions of individuals other than the Subject Judge. Complainant included various attachments and a USB drive with her Complaint.

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, 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 raise an inference that the Subject Judge was part of a conspiracy, had a conflict of interest, acted with an illicit or improper motive, was not impartial, 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