

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 11 2019

David J. Smith
Clerk

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

Judicial Complaint No. 11-18-90121

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 2008 Complainant filed an amended Title VII employment discrimination complaint against his former employer. After various proceedings, the case was reassigned to the Subject Judge in October 2008. 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” and which did not bear a hand-written signature. In June 2009 Complainant filed a “Motion for Subpoena” seeking to subpoena certain time cards, and a magistrate judge denied the motion.

In October 2009 Complainant filed a motion for leave to file a second amended complaint, and the Subject Judge denied the motion, finding it was untimely and would unduly prejudice the defendant. Complainant then filed a motion to recuse the Subject Judge in which he alleged that a statement she previously made to a newspaper was “derogatory” and brought her impartiality into question. Complainant quoted a newspaper article as follows: “Race and gender, she said, have not been impediments in her career. Fellow attorneys and her judicial colleagues respect her abilities, she said, which has helped to erase some of the biases that may have existed otherwise.” In late October 2009 the Subject Judge denied the motion to recuse, finding that Complainant had failed to establish a basis for her recusal.

In November 2009 the Subject Judge entered an order granting the defendant's motion for summary judgment. The Subject Judge found that, upon consideration of the defendant's "factually supported contentions" and Complainant's conclusory responses, Complainant had failed to show that the defendant's legitimate, non-discriminatory reason proffered for his termination was pretextual. Complainant appealed, and this Court later affirmed the district court's grant of summary judgment in favor of the defendant.

In November 2009 the Subject Judge entered an order granting the defendant's motion for summary judgment. The Subject Judge found that, upon consideration of the defendant's "factually supported contentions" and Complainant's conclusory responses, Complainant failed to show that the defendant's legitimate, non-discriminatory reason proffered for his termination was pretextual. Complainant appealed, and this Court later affirmed the district court's grant of summary judgment in favor of the defendant.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge suffers from a disability. He asserts, "Whether inherent or adverse to medication, the result was a dyscalculic inability to grasp what a sound person can easily recognize." Complainant complains that the Subject Judge cited a defense exhibit "signed" in January 2006 and stating that the last day he worked was in November 2006. He asserts that the Subject Judge was "oblivious" to the "numeric infraction" of January being earlier in the year than November and to the fact that the exhibit was unsigned.

Complainant states that the "tendency of dyscalculia was again demonstrated while viewing the additional defense exhibits . . . in which the documents' event date being depicted was taken for the date it was written." He alleges that the "trial date itself may be another example of dyscalculic disability," noting that the plaintiff and his witnesses appeared on a certain date but the defense did not appear, which he asserts would normally would result in a default judgment in the plaintiff's favor. He states, "It appears the dyscalculia was not only oblivious to illegitimate documents, thereby endorsing such, but also a defendant's failure to appear."

Complainant states that the "only alternative to dyscalculia, a disability, would be a clear and cognitive understanding that a defendant corporation submitted spurious material in a discrimination case; whereby the cooperative enactment of such is highly unethical." He states:

Recognizing that documents are not signed while declaring that they are; recognizing that documents do not have draft dates while declaring that they do; and further citing the egregious exhibit . . . that was, also in kind,

recklessly fabricated years later, baring dates that are impossible to reconcile, can only otherwise be interpreted as acts of personal misconduct “under color of law.”

Complainant also asserts that the Subject Judge “used the semblance of her office to enact blatant fraud on behalf of a corporation.”

Complainant takes issue with the denial of his request to subpoena time cards, contending that the ruling “displayed a sinister invitation for the corporation to continue to rely on [the Subject Judge] to enact fraud” He states that the “event date depicted on witness statements, being enacted in place of a missing draft date, is also fraud,” which was an attempt to “obscure that the statement simply did not exist at the time the corporation stated.”

Complainant discusses an alleged “systemic firewall of institutional racism,” and he complains about, among other things, the doctrine of “same actor inference.” He also complains that the Subject Judge stated that one of the witnesses was Complainant’s “girlfriend.” Finally, Complainant alleges that the Subject Judge made the following statement, which he contends is inappropriate: “Race and gender have not been an impediment in my career, my colleagues respect me which allows me to remove the biases, race or gender that they have.” He asserts that the statement is derogatory and reflected a “tendency to blame the victim.” He attached documents to his 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, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that the Subject Judge suffered from a disability, committed fraud, 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