CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-18-90134

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. Magistrate 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 Magistrate 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 December 2016 Complainant filed a pro se employment discrimination action against her former employer and a motion to proceed in forma pauperis (IFP). The next month, she filed an amended complaint, and the Subject Judge granted her IFP motion. Complainant filed a motion for the appointment of counsel, which the Subject Judge denied because Complainant had failed to demonstrate extraordinary circumstances. Complainant filed a motion for reconsideration of that order, which the Subject Judge denied.

Later in January 2017 a summons was issued as to the defendant, and in March 2017 Complainant filed a motion for a default due to the defendant's failure to respond to the summons. The Subject Judge denied the motion without prejudice, finding that Complainant had not provided proof that the defendant had been served because no return of service had been received by the clerk and service had not been waived. In mid-March 2017 the defendant filed a waiver of service of summons. Several days later, Complainant filed a motion for a default judgment, arguing that the defendant had failed to timely respond to the summons issued in January 2017. The Subject Judge denied the motion, noting that the defendant had filed a waiver of service of summons in March 2017.

In April 2017 Complainant filed a motion, which the Subject Judge construed as a motion for a default judgment and denied. Complainant then filed an additional motion seeking a default, as well as a motion for the defendant to pay the expenses of service. In late April 2017 the defendant filed an answer to the amended complaint. Following a hearing in May 2017, the Subject Judge entered an order denying Complainant's motions for default and for the defendant to pay service expenses. The order stated that a default was not appropriate in light of the defendant's answer and directed the parties to file a joint case management report.

After that, Complainant filed a "Motion to Remove" the Subject Judge in which she, among other things: (1) argued that the parties had not consented to have a magistrate judge preside over the case; (2) asserted that the Subject Judge's rulings were contrary to the law; and (3) took issue with the orders denying her motions for a default or default judgment. In June 2017 the Subject Judge denied the motion, generally finding that Complainant had failed to establish a basis for his recusal. Over Complainant's objections, a district judge affirmed the Subject Judge's order denying the motion for his recusal.

After that, Complainant filed another motion seeking a default judgment against the defendant, which the Subject Judge denied, noting that Complainant had previously and improperly sought that relief on five separate occasions. Complainant appealed the Subject Judge's order, and this Court later dismissed the appeal for lack of jurisdiction. After additional proceedings, in October 2017 the Subject Judge ordered Complainant to answer certain interrogatories and produce certain documents.

In December 2017 the defendant filed a motion for sanctions against Complainant, arguing that she had failed to comply with her discovery obligations and court orders. The next month, the Subject Judge issued an order directing Complainant to show cause why the motion for sanctions should not be granted and why the case should not be dismissed. Following a hearing at which Complainant did not appear, the Subject Judge issued a report recommending that the motion for sanctions be granted in part and that the case be dismissed because of Complainant's failure to prosecute, failure to participate in discovery, and failure to abide by court orders. In February 2018 a district judge adopted the report and recommendation, granted in part the motion for sanctions, and dismissed the case with prejudice.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant first contends that the defendant failed to respond to the summons in a timely manner and that as a result she was entitled to a default judgment. She alleges that the Subject Judge did not follow the "rules and procedures that govern the court process." She also states that both of the parties did not consent to have a magistrate judge preside over the case.

Complainant asserts that every decision the Subject Judge made was in favor of the defendant, and she believes that the Subject Judge has a personal bias and prejudice against her. She states that, at the May 2017 hearing: (1) the Subject Judge's "attitude and remarks toward" her were "unethical and unbecoming of a judge"; (2) he showed favoritism towards the defendant; and (3) he "overlooked the fact that" the defendant missed all of its deadlines. Finally, Complainant complains that the Subject Judge did not recuse himself from the case after she moved for his removal "because he lied about [Complainant] having to go to trial." She attached various documents to 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, reports, and orders in the case, the allegations are directly related to the merits of the Subject Judge's decisions or procedural rulings. Furthermore, contrary to Complainant's suggestion, the Subject Judge did not exceed his authority by issuing orders in the case. Although a magistrate judge does not have the authority to rule on a dispositive motion without the parties' consent, a magistrate judge may rule on certain pre-trial matters without such consent. See 28 U.S.C. § 636(b)(1)(A). That is what happened in this case. Apart from the decisions or procedural rulings that Complainant challenges, she provides no credible facts or evidence in support of her claims that the Subject Judge was biased or prejudiced against her, showed favoritism to the defendant, 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