

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-19-90050 through 11-19-90052

IN THE MATTER OF A COMPLAINT FILED BY _____

**IN RE: The Complaint of _____ against United States Circuit Judges
_____, _____, and _____ of the United States Court of Appeals for
the _____ Circuit, 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 Circuit Judges _____, _____, and _____ (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”).

Background

The record shows that in June 2016 Complainant filed an amended complaint against his former employer, alleging that the defendant had discriminated against him based on his race and disability. In November 2016 the Subject Judge issued a scheduling order, establishing a discovery deadline in May 2017. Complainant then filed a second amended complaint and a motion to extend the deposition deadlines. The Subject Judge entered an order granting the motion for extension, extending all unexpired deadlines for 60 days, and stating that no further extensions would be granted.

In July 2017 Complainant filed a “Motion to Termina[t]e Sanctions” in which he asserted that the defendant had withheld information. The defendant filed a motion to quash a subpoena Complainant had issued and a response to the motion to terminate sanctions. Complainant filed a second motion to terminate sanctions. In August 2017 the Subject Judge entered an order: (1) granting the defendant’s motion to quash, finding the issuance of the subpoena was procedurally improper and untimely; (2) denying without prejudice the first motion to terminate sanctions as “vaguely worded”; and (3) denying the second motion to terminate sanctions as untimely. The order gave Complainant additional time to file a new motion.

Later in August 2017, Complainant filed a “Motion to Shorten Response Time to Produce Documents” in which he argued that the defendant had not provided certain

documents. The Subject Judge denied the motion because it did not comply with the requirements in the court's earlier order. Complainant then filed a motion to compel the defendant to provide requested documents. The Subject Judge later denied the motion because the discovery deadline had passed and, alternatively, because Complainant had failed to comply with the court's earlier order allowing him to file a new discovery-related motion. Also in August 2017, the parties filed cross-motions for summary judgment.

In March 2018 the district judge entered an order granting the defendant's motion for summary judgment and denying Complainant's motion for summary judgment, generally finding Complainant had failed to establish a prima facie case of employment discrimination based on race or disability. Complainant appealed. He also filed in the district court and in this Court a motion seeking sanctions against the defendant "for failure to disclose and [s]poliation of evidence." The district judge denied the motion, noting that the court lacked jurisdiction in light of Complainant's appeal.

In June 2018 a panel of this Court that included Judge _____ denied the motion for sanctions. In January 2019 a panel of this Court composed of the Subject Judges issued an opinion affirming the denial of Complainant's discovery-related motions, holding that the district court had not abused its discretion in denying the motions seeking additional documents from the defendant. The panel also affirmed the grant of summary judgment in favor of the defendant, holding that the district court correctly concluded that Complainant was unable to establish a prima facie case of discrimination.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant complains about the actions of the defendant in the case, and he asserts the defendant "used Spoliation o[f] evidence, altered evidence, used perjury, judicial estoppel, and hearsay to terminate" him. He also takes issue with the district judge's discovery-related orders in the case, contending in part that the district judge "ignored all means of getting" certain information from the defendant.

Complainant states that the Subject Judges' January 2019 opinion "confirmed the district court[']s unfair decision," "allowed the Defendant to alter evidence, use hearsay, perjury, judicial estopped, and spoliation of evidence," and "conformed a decision that allowed the defendant to alter evidence, with[]hold evidence, commit perjury, and judicial estoppel." He asserts that, "[i]f not for these actions," he would have prevailed on his claims. Complainant also discusses the merits of the claims raised in his lawsuit, and he attached a document to his Complaint.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ orders and opinion on appeal, 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 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