

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90066

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 28 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States District Judge
_____ of the United States 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 2019 Complainant filed an employment discrimination lawsuit against her former employer, _____, alleging in part that the defendant discriminated against her based on her post-traumatic stress disorder (PTSD). She also filed a motion to proceed in forma pauperis (IFP) and for the appointment of counsel. The Subject Judge entered an order granting Complainant leave to proceed IFP but denying her request for the appointment of counsel. In March 2019 the defendant filed a motion to dismiss the complaint or alternatively for a more definite statement. The Subject Judge entered an order granting the motion for a more definite statement, finding that Complainant had provided almost no details about her claims.

In April 2019 Complainant filed an amended complaint. A few days later, the defendant filed a motion to seal the amended complaint because it included the full names of minor children and Complainant’s full birth date, and the Subject Judge granted the motion. Complainant then filed another amended complaint, and the defendant filed a motion to dismiss it. Later in April 2019 Complainant filed, among other things, a motion for reconsideration of the order denying her request for the appointment of counsel, a motion to amend her complaint, and a notice of appeal. In July 2019 this Court dismissed the appeal in part for lack of jurisdiction but allowed Complainant’s challenge to the order granting the defendant’s motion to seal to proceed.

Meanwhile, in late April 2019 the Subject Judge entered an order granting in part Complainant's motion for reconsideration and motion to amend. That order appointed counsel for Complainant for the sole purpose of aiding in the drafting of a complaint that complied with the Federal Rules of Civil Procedure. The next month, the Subject Judge entered an order withdrawing the appointment of counsel, stating that the court had learned that Complainant was unwilling to have appointed counsel help her draft a new complaint because counsel had attended the _____. The order stated that there was no conflict of interest and that because Complainant had declined the assistance of appointed counsel, she would be required to either proceed pro se or retain an attorney of her choosing. The Subject Judge also found that Complainant's second amended complaint was a "shotgun pleading" and directed her to file a third amended complaint.

In June 2019 Complainant filed, among other things, a motion for discovery and a motion to appoint counsel, and the Subject Judge entered an order denying the motion for discovery as premature and denying the motion to appoint counsel for the reasons stated in the court's earlier order. After that, Complainant filed motions for an extension of time to file the third amended complaint, motions seeking a change of venue, and notices of appeal. In July 2019 the Subject Judge entered an order granting Complainant's motions for extension of time and denying her motions to transfer venue. This Court later clerically dismissed Complainant's appeal for want of prosecution.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant contends that the Subject Judge "is not being considerate of [her] diagnoses of Major Depression and PTSD" due to an on-the-job injury that she sustained and the stress caused by her former employer. She complains that the defendant's counsel submitted a motion that did not indicate whether it was opposed or unopposed, in violation of an order issued by the Subject Judge.

Complainant discusses the court's orders concerning her requests for appointment of counsel and states that the Subject Judge should have appointed her an attorney "to assist with [her] entire case" because she could not afford one and did not know the law well enough to represent herself. She states that she did not understand the Subject Judge's order requiring her to file a third amended complaint, and she complains that the Subject Judge is "focused on the outline, guidelines, and format of the amended complaint." Finally, Complainant states that she feels the Subject Judge and the court "are in favor of" the defendant "instead of upholding the law." She attached a document to her 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 Judge’s official actions, findings, rulings, 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, she provides no credible facts or evidence in support of her claims that the Subject Judge is biased in favor of 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