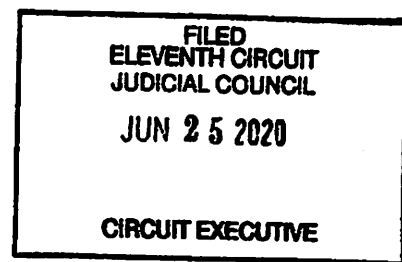


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90099



**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW*

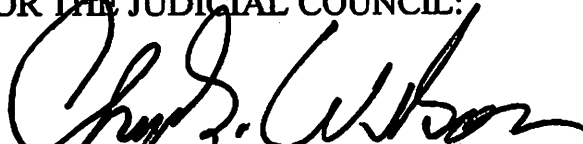
Before: WILLIAM PRYOR, Chief Circuit Judge, WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, and GRANT, Circuit Judges; MOORE, THRASH, LAND, COOGLER, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of then-Chief Judge Ed Carnes, filed on 31 March 2020, and of the petition for review filed by the complainant on 4 May 2020, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

* Former Chief Judge Ed Carnes and Chief District Judge Steven D. Merryday did not take part in the review of this petition.

MAR 31 2020

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-19-90099

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”).

As an initial matter, after Complainant filed her Complaint, she filed two supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

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 a magistrate judge granted her IFP motion. In January 2017 a summons was issued as to the defendant, and a couple of months later, Complainant filed a motion for a default due to the defendant’s failure to respond to the summons. The magistrate judge denied the motion without prejudice, finding that Complainant had not provided proof that the defendant had been served. 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 magistrate 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 that the magistrate 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 magistrate judge entered an order denying Complainant's motions for default and for the defendant to pay service expenses, stating that under Fed. R. Civ. P. 55 and in light of the answer the defendant had filed a default was not appropriate.

After that, Complainant filed a "Motion to Remove" the magistrate judge, taking issue with, among other things, the orders denying her motions for a default or default judgment. In June 2017 the magistrate judge denied that motion, generally finding that Complainant had failed to establish a basis for his recusal. Complainant then submitted a memorandum to the Subject Judge requesting that the magistrate judge be removed, and the Subject Judge directed the clerk to docket the correspondence as an objection, overruled the objection as meritless, and affirmed the magistrate judge's order denying the motion for recusal.

Complainant filed another motion seeking a default judgment, and the magistrate judge denied it, noting that Complainant had previously and improperly moved for that relief on five separate occasions. Complainant appealed the magistrate judge's order, and this Court later dismissed the appeal for lack of jurisdiction. After additional proceedings, including a telephonic hearing at which Complainant did not appear, the magistrate judge granted the defendant's motion to compel and ordered Complainant to answer certain interrogatories and to 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 magistrate 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. After a hearing at which Complainant did not appear, the magistrate judge issued a report recommending that the motion for sanctions be granted in part and that the case be dismissed due to Complainant's failure to prosecute, failure to participate in discovery, and failure to abide by court orders. In February 2018 the Subject Judge adopted the report and recommendation, granted in part the motion for sanctions, and dismissed the case with prejudice.

Over a year later, in May 2019 Complainant filed a "Request to Pay Out Settlement for Case" in which she contended the case should have ended with a default judgment against the defendant. The Subject Judge issued an order construing the filing as a motion to reconsider the order denying her sixth motion for default and denying it. The order noted the case had been dismissed after Complainant failed to prosecute, failed to participate in discovery, failed to attend two hearings, failed to abide by several orders, and improperly moved for default judgment six times, and stated that each of her motions for default judgment lacked merit because the defendant had waived service and had answered the complaint.

Complainant filed objections to the order in which she generally took issue with the Subject Judge's statements and again moved for a default judgment and payment of a settlement. In June 2019 the Subject Judge entered an order denying the motion, finding that Complainant's arguments were frivolous and again noting that her case was dismissed because she had failed to participate in discovery, failed to attend hearings, failed to abide by court orders, and improperly moved for a default judgment six times. The order stated that Complainant's action was finished. After that, Complainant filed another document in which she took issue with the statements in the Subject Judge's order. The case is closed.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant asserts that the Subject Judge "failed to review, correct and respond to documents [she] submitted to the Courts disputing the way in which [her] case was handled," and she asserts the court "handled [her] case wrong." She complains the Subject Judge failed to remove the magistrate judge from the case "for handling [the] case wrong on purpose," even though she wrote the Subject Judge a memorandum explaining why she wanted the magistrate judge removed. She also complains that she never received a response to her filing contesting the statements in the Subject Judge's June 2019 order.

Complainant then takes issue with orders stating that she failed to participate in discovery and to attend hearings, contending those matters were not "part of the process" of her case, and she states the court is "making excuses" for not paying her settlement. She asserts that the defendant failed to sign and return a waiver of service and failed to respond to her amended complaint within the applicable deadline, and she complains that the court denied her motions for default and default judgment. Finally, she alleges the court "lie[d]" and "d[id] favors" for the defendant, and she asserts the "docket has been altered" and that lawsuits were filed in her name without her knowledge. She attached documents to her Complaint.

Supplements

In her first supplemental statement, Complainant reiterates her allegation that the Subject Judge failed to respond in her case and again contends that she should have received a default judgment and payment of a settlement. She also requests that a decision be made on her Complaint of Judicial Misconduct or Disability. In her second supplemental statement, Complainant generally takes issue with delay in ruling on 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, 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 that Complainant challenges, she provides no credible facts or evidence in support of her claims that the Subject Judge lied, did favors for 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**.

/s/ Ed Carnes
Chief Judge