

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90030

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 25 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 November 2018 Complainant, through counsel, filed a lawsuit against a company, raising claims under the Americans with Disabilities Act. After various proceedings, Complainant’s attorney filed a motion to withdraw, which the Subject Judge granted. In November 2019 Complainant filed a notice stating he was being forced to represent himself due to criminal activity committed by the defendant.

Following various discovery related filings, on February 18, 2020, the Subject Judge entered an order: (1) stating that Complainant had on several occasions improperly attempted to file motions or exhibits through email; (2) directing him to read and abide by the court’s standing order on ex parte communications; and (3) requiring him to sign and file a certificate of compliance within 14 days. In early-March 2020 Complainant filed a motion to extend the discovery period in which he complained about the defendant’s actions in connection with discovery.

On March 4, 2020, the Subject Judge entered an order stating that Complainant had not complied with the previous order requiring him to file a certificate of compliance and directing him to comply with the order by March 13, 2020. The order also noted that Complainant’s motion, materials attached to the motion, and the envelope in which it was sent indicated that he had an address different from the one the court had on file, and the order directed him to promptly update his contact information if he was no longer able to

receive materials at the address in the court's records. Also on March 4, 2020, Complainant filed a certificate of compliance stating he had read and would abide by the standing order. Later in March 2020, the defendant filed a motion for summary judgment. The next month, Complainant filed a motion to amend his complaint, a response in opposition to the summary judgment motion, and an amended complaint.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge is biased against him as a "dyslexic, whistleblower, non-attorney," "can't read a word from" him, cannot rule in his favor, and punished him because of his status. He alleges the Subject Judge violated the court's own standing orders on sealing documents, conferring, and discovery resolution procedures to protect the defendants' criminal activity and failure to follow the rules.

Next, Complainant contends the Subject Judge fabricated evidence and arguments to prejudice his case, specifically asserting the Subject Judge created "fake evidence" by stating that a return address on an envelope was proof that he did not live in a certain state. He states the Subject Judge: (1) "did not try to protect [his] disability for public consumption"; (2) intentionally did not rule on his document seeking to "remove the wrongful protective order"; (3) refused to rule that the defendant did not act in good faith during discovery; and (4) refused to rule on joint discovery issues.

In addition, Complainant contends the Subject Judge permitted the defendant to submit inaccurate information, violate a standing order on conferring, not to act in good faith during discovery, change its legal argument, lie to the court, and demand that Complainant be sanctioned. He complains that the Subject Judge admonished him for emailing a response to the court. Finally, he contends that the Subject Judge's March 4, 2020 order shows the Subject Judge is biased against him because the court incorrectly stated his certificate of compliance was late. He attached an invoice and a receipt 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 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. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased against him or in favor of the defendant, fabricated evidence or arguments, acted with an illicit or improper motive, 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/ William H. Pryor Jr.

Chief Judge