

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

11-20-90043

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

OCT 29 2020

CIRCUIT EXECUTIVE

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

ON PETITION FOR REVIEW*

Before: WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Hall, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 5 August 2020, and of the petition for review filed by the complainant on 8 September 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

* Chief Circuit Judge William H. Pryor Jr. and Chief District Judge L. Scott Coogler did not take part in the review of this petition.

CONFIDENTIAL

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

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

AUG 05 2020

**David J. Smith
Clerk**

Judicial Complaint No. 11-20-90043

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 2017 Complainant filed an employment discrimination lawsuit against multiple defendants, and she filed an amended complaint in February 2018. The next month, one defendant filed a partial motion to dismiss the amended complaint, and in July 2018 the Subject Judge granted in part and denied in part the motion, finding, among other things, that a certain claim of race discrimination had not been exhausted.

In October 2018 the Subject Judge entered an order stating it had been brought to the court’s attention that some of Complainant’s other claims may be subject to dismissal and directing the parties to brief whether the remaining claims were due to be dismissed. After that, one defendant filed a motion to dismiss certain claims. In February 2019 the Subject Judge issued an opinion and order granting in part and denying in part the defendant’s motion to dismiss, stating that unless Complainant filed a pleading stating she wished to pursue certain claims within 14 days, the court would dismiss those claims without prejudice. Complainant then filed a notice stating her intent to pursue all of her claims, and she also filed two additional amended complaints against one defendant.

In May 2019 the Subject Judge issued an opinion: (1) ruling on certain motions; (2) finding Complainant’s claim of defamation/libel was due to be dismissed on multiple grounds; (3) construing Complainant’s latest amended complaint as a motion to file an

amended complaint; (4) granting the motion to amend but with the defamation/libel and race discrimination claims stricken; and (5) noting that various claims remained pending. The defendant then filed an answer to the third amended complaint and asserted various affirmative defenses. Complainant filed a motion to strike the answer and affirmative defenses, arguing in part that the affirmative defenses did not give her fair notice of the nature of the defenses. In July 2019 the Subject Judge entered an order denying the motion to strike and ordered the parties to confer regarding their discovery issues.

In August 2019 the defendant filed a motion for summary judgment, and Complainant filed a response in opposition. Complainant then filed a motion for a hearing and for sanctions against the defendant, arguing in part that the defendant's attorney submitted an "unethical" summary judgment motion that contained "irrelevant, misleading, altered, and false statement and evidence." She also filed a request for the court to take judicial notice of certain material. In November 2019 and January 2020 docket entries resetting the bench trial were entered on the docket.

In March 2020 the Subject Judge issued an opinion granting the defendant's motion for summary judgment and denying Complainant's motions for sanctions and for judicial notice. With respect to the motion for sanctions, the Subject Judge found the defendant submitted no pleadings that: (1) were not well-grounded in fact and had no reasonable factual basis; (2) were not legally tenable; or (3) were submitted in bad faith or for an improper purpose.

In setting out the facts of the case, the Subject Judge stated that Complainant was investigated at her place of employment following an arrest for domestic violence and that, ultimately, a temporary letter of reprimand was placed in her personnel file. The Subject Judge also stated that, in connection with Complainant's job applications to other facilities, various individuals at her place of employment completed "reference checks" on her behalf, some of which mentioned disciplinary action involving Complainant.

The Subject Judge then generally found that there was no genuine issue as to any material fact, the defendant was entitled to judgment as a matter of law on all of the federal claims, and a state-law claim would be dismissed without prejudice. The Subject Judge specifically found, among other things, that Complainant did not establish a prima facie case of sex discrimination because she failed to present a similarly situated comparator who was subjected to different treatment, noting she introduced no evidence that her strongest comparator had any disciplinary history. The Subject Judge also found that Complainant's superiors' reference checks did not show intentional discrimination, as the applicable policy did not indicate it was inappropriate to discuss a "pending disciplinary investigation."

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge “made a mockery of the Judicial System” and handled her case without structure, consistency, and expediency in violation of the Judicial Conduct and Disability Act and the Code of Conduct for United States Judges. She alleges the Subject Judge: (1) engaged in ex parte communications, citing his October 2018 order stating it had been brought to the court’s attention that some of her claims may be subject to dismissal; (2) intimidated her by stating the case would be prolonged if certain claims were not removed from the case, despite that those claims had been exhausted; (3) allowed boilerplate affirmative defenses without justification; (4) allowed the defendant to fail to comply with discovery requests and provide apparently falsified materials; (5) defended defense counsel’s unethical tactics; (6) allowed an altered deposition; (7) allowed irrelevant materials to taint the record; (8) repeatedly denied her requests for hearings concerning such issues; (9) used “text orders” to reset trial dates without cause; and (10) ruled on the defendant’s summary judgment motion after scheduling a pretrial conference and bench trial.

Complainant states the Subject Judge intentionally did not include all facts and used “manipulative language” in his opinion, as when he used the phrase “pending disciplinary action” when an investigation “does not necessarily mean disciplinary action will be taken” and knowing she had provided direct evidence that no disciplinary action had been taken against her at the time the reference checks were completed. Complainant also takes issue with the Subject Judge’s determination that she failed to establish a prima facie case that she was treated differently than a similarly situated individual, contending he disregarded that she also had not been the subject of disciplinary action.

Complainant alleges the Subject Judge made these findings: (1) because he knew the defendant’s attorney would not be able to provide a legitimate non-discriminatory reason for her client’s actions; (2) to embarrass and punish Complainant by continuing to publicize a dismissed 2013 charge that had been expunged from her record; and (3) to prolong Complainant’s fight for justice as long as possible. Finally, Complainant states the Subject Judge made her feel she is not important and that her rights as a citizen and human do not matter.

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, orders, and opinions 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 acted with an illicit or improper motive, violated the Code of Conduct for United States Judges, engaged in improper ex parte communications, treated her in a demonstrably egregious and hostile manner, 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