

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

JUN 25 2020

David J. Smith
Clerk

Judicial Complaint No. 11-20-90068

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, in February 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. The same day, 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. After that,

Complainant filed, among other things, 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 denying him, a disabled non-attorney, due process. He asserts the Subject Judge and the defendant are not following the Federal Rules of Civil Procedure and the court's local rules. Complainant alleges that, since he filed a previous Complaint of Judicial Misconduct or Disability against her, the Subject Judge has intentionally not ruled on various filings in the case "because the Defendant lost because the Defendant has no facts, law, or morality to win the case."

Complainant complains the Subject Judge has not issued a ruling allowing him to take a deposition in the case. He also states that one of his filings was uploaded incorrectly, the court will not fix it, and the Subject Judge's office refused to answer emails he sent about it. He then contends the Subject Judge has permitted the defendant to take inappropriate action in the case, including by filing late briefs and failing to follow rules and standing orders. Finally, Complainant states the Subject Judge "clearly does not want to rule for [him] the disabled, whistleblower, non-attorney."

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, 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