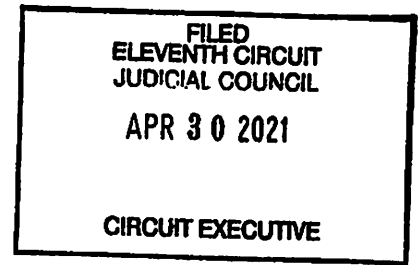


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-20-90088



**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; MOORE, THRASH, CORRIGAN, COOGLER, 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, Coogler, and Walker, the order of Chief Judge William H. Pryor Jr., filed on 16 December 2020, and of the petition for review filed by the complainant on 4 January 2021, 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. did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 16 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90088

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate 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 Magistrate 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 December 2015 Complainant filed a pro se amended civil rights complaint against her former employer the _____ (“the _____”) and _____ (“_____”), raising, among others, claims of employment discrimination, retaliation, conspiracy, and defamation. In April 2016 a district judge issued an order granting in part and denying in part motions to dismiss that had been filed, dismissing various counts in the amended complaint for failure to state a claim, and granting Complainant leave to file a second amended complaint. Complainant then filed a second amended complaint and a third amended complaint, raising nine counts against the _____ and _____. In August 2016 two attorneys entered appearances on behalf of Complainant.

In December 2016 Complainant filed a motion for sanctions against the _____ for spoliation, alleging in part that the _____ had intentionally destroyed her personnel files and other records to obstruct her ability to prove her case. The _____, through its attorney _____, filed a response in opposition, arguing the records it destroyed were duplicates, the destruction was not done in bad faith or at the direction of the relevant decisionmaker, and Complainant failed to show the documents were critical to her claims. The next month, both defendants filed motions for summary judgment.

At a hearing before the Subject Judge in February 2017, the Subject Judge found: (1) the motion for sanctions was procedurally deficient, as it was filed before the filing of a motion to compel or any conferral regarding a deficiency in any discovery request; and (2) in any event, Complainant did not make a sufficient showing that the materials at issue, including an employment contract, ever existed or that the _____ acted in bad faith. The Subject Judge then issued an order denying the motion for sanctions for the reasons stated at the hearing. After that, Complainant's attorneys filed a motion to withdraw, stating irreconcilable differences had arisen between them and Complainant.

Complainant then filed multiple motions seeking various types of relief, and the Subject Judge set a hearing on the motion to withdraw and other motions for March 2017. Complainant filed a motion to allow witnesses to testify at the hearing, and the Subject Judge denied the motion. Following the hearing, the Subject Judge issued an order granting the motion to withdraw, granting Complainant's request to proceed pro se, and ruling on other motions that had been filed.

In late March 2017, Complainant filed a renewed motion for sanctions for spoliation, generally arguing the _____ destroyed documents in bad faith which prejudiced her case. Following a hearing, in August 2017 the Subject Judge issued an order denying the renewed motion for sanctions, finding Complainant failed to produce credible evidence that the _____ acted with bad faith in destroying her personnel file, failed to establish that certain materials were in fact spoliated, and failed to show she was prejudiced as a result of the alleged spoliation of those materials. After that, Complainant filed, among other things, a notice of appeal from the order denying her renewed motion for sanctions and a motion for summary judgment. This Court later granted the _____ motion to dismiss the appeal for lack of jurisdiction.

In September 2017 the district judge issued an order denying in part the _____ motion for summary judgment on Complainant's claims of racial discrimination and retaliation, and granting in part the defendants' motions for summary judgment as to the remaining claims, including all claims against _____. Complainant filed a motion for reconsideration, which the district judge denied. She also filed a notice of appeal, and this Court later dismissed the appeal for lack of jurisdiction.

In December 2017 Complainant filed a Fed. R. Civ. P. 60(b) motion for relief from the court's summary-judgment order, arguing the defendants and their attorneys made false statements and fraudulently failed to disclose the existence of her written employment contract. Complainant then filed, among other things, another motion for sanctions against the defendants, and the district judge entered an order denying the motion, finding it was an attempt to challenge the court's summary judgment order and that Complainant failed to substantiate the allegations in her motion.

In August 2018 the _____ filed multiple motions in limine, seeking to prevent Complainant from introducing evidence or mentioning at trial any claims dismissed by the court or resolved on summary judgment, and the next month, the district judge entered an order granting certain motions and denying others. The case then proceeded to trial, during which Complainant and the _____ both made oral motions for judgment as a matter of law.

At the conclusion of the trial in late September 2018, the jury: (1) found in favor of Complainant on her discrimination and retaliation claims; (2) found the _____ proved an affirmative defense as to the discrimination claim, which precluded her from recovering damages; and (3) awarded her over \$300,000 on her retaliation claim. The next day, Complainant filed a Motion for Attorney's Fees and Cost of Litigation and Other Miscellaneous Relief, in which she also sought an award of front pay. Judgments were then entered in accordance with the jury verdict and the court's earlier summary-judgment order, and Complainant filed notices of appeal.

In October 2018 the district judge entered an order denying the portions of Complainant's motion to the extent she sought attorney's fees and costs and referred the portion of the motion requesting an award of front pay to the Subject Judge. The _____ then filed a renewed motion for judgment as a matter of law, generally arguing no reasonable jury could have found in favor of Complainant on her retaliation claim. On December 11, 2018, the Subject Judge held an evidentiary hearing on the determination of front pay where he stated that he intended to award Complainant front pay and intended to prepare a report and recommendation for the court's consideration as quickly as possible. In late December 2018, Complainant filed a motion for sanctions or from relief from judgment, again alleging the _____ made misrepresentations and engaged in fraud.

In mid-February 2019 the district judge entered an order that, among other things, granted the _____ motion for judgment as a matter of law, reversed the jury's verdict as Complainant's retaliation claim, and denied her motion for sanctions. The district judge found that Complainant failed to introduce sufficient evidence at trial for a reasonable jury to find a causal connection between her protected activities and the _____ adverse employment actions. A second amended judgment was then entered in favor of the _____ on the retaliation claim. The district judge also issued an order denying the portion of Complainant's earlier motion that sought front pay, finding she was no longer eligible for an award of front pay. Complainant filed a motion for a new trial, a motion for reconsideration, and a notice of appeal, and the district judge entered orders denying the motion for a new trial and the motion for reconsideration.

In April 2020 this Court issued an opinion affirming the district court's orders: (1) granting in part and denying in part the defendants' motions for summary judgment; (2) denying Complainant's post-trial motion for attorney's fees and costs; (3) granting the

_____ post-trial motion for judgment as a matter of law and denying Complainant's motion for sanctions; (4) denying her motion for front pay; and (5) denying her motion for a new trial.

The next month, Complainant filed an "Independent Action for Relief from Judgment to Remedy Fraud on the Court" pursuant to Rule 60(d), alleging newly discovered evidence showed that the _____, _____, and others engaged in misconduct and fraud during the case. She also filed a motion for the case to be reassigned to another magistrate judge or, alternatively, for the recusal of the Subject Judge, generally alleging the Subject Judge had a conflict of interest because he was to review errors he committed and was biased against her and in favor of the _____.

In June 2020 the district judge issued an order denying Complainant's Independent Action for Relief and other motions she had filed, finding no extraordinary circumstances warranted relief under Rule 60(d) and that the allegations had already been considered and rejected on multiple occasions. The Subject Judge then denied as moot the motion for reassignment or recusal.

The record also shows that in May 2019 Complainant filed an "Independent Action for Relief from Judgment to Remedy Fraud on the Court" pursuant to Rule 60(b), alleging the _____, _____, and others engaged in misconduct, conspired, suborned perjury, and committed fraud in connection with her employment case. A district judge then entered an order dismissing the action without prejudice to her filing a motion for relief from judgment in her employment case, as that is where she alleged the fraud was committed. Complainant filed additional motions in the case, which the district judge denied.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge: (1) had an "illegal bias" and was unable to be fair and impartial; (2) committed multiple impeachable offenses; (3) was part of a "corrupt conspiracy" to cause the _____ to win the case; (4) was motivated to help the _____ obtain millions of dollars in new state funding; (5) used Complainant's pro se status against her; (6) abused his power and violated his oath of office; (7) made false statements intended to mislead Complainant, the public, and the trier of fact; and (8) feigned ignorance concerning the existence of evidence and knowingly concealed evidence. She complains the Subject Judge denied her request for an evidentiary hearing, denied "numerous requests" to present witness testimony at hearings, denied her a meaningful opportunity to present her case and prove her allegations, and failed to recuse himself from the case.

Complainant states the Subject Judge knew that: (1) the _____ initially denied destroying her personnel files but then admitted it had destroyed the files; (2) the

_____ changed its answer concerning the timing of the destruction; and (3) the destruction of public records was a criminal misdemeanor and barred the _____ from claiming any affirmative defenses. She alleges that, at three hearings, the Subject Judge concealed his actual knowledge of the existence of her employment contract in the record, and “feigned that he was conflicted by” certain false testimony that there was no written contract.

Next, Complainant asserts the Subject Judge: (1) applied federal law instead of state law in an effort to make it impossible for Complainant to prove the _____ mental state; (2) was “motivated by an obvious bias to protect” the _____ and its attorneys, who had fabricated evidence, suborned perjury, and committed fraud on the court; (3) sought to conceal the _____ attorneys’ misconduct and knowingly, intentionally, and willfully misapplied the law by failing to sanction the attorneys for their misconduct; and (4) participated with the attorneys to commit fraud upon the court and to defraud her.

Complainant contends the Subject Judge lied at a hearing by stating he would award her front pay and then delayed acting for five months because he knew the district judge planned to reverse the jury verdict. She also alleges the Subject Judge coordinated with the _____ attorney to present a “false story to take away the costs taxed by the clerk awarded to” her. Complainant further contends the Subject Judge clearly erred in excluding her evidence in opposition to the defendants’ motions for summary judgment and acted with bias to dismiss various claims, and she complains the Subject Judge ruled that she could not mention certain claims at trial and excluded her witnesses based on an alleged failure by her former attorney.

Complainant alleges that _____ stated, “Judge you know me,” and the Subject Judge responded, “Yes, I know you,” which acknowledged a long-standing relationship between them. She asserts the Subject Judge “influenced the transcription of the hearing record to exclude this and several instances of inappropriate dialogue between” them. Complainant alleges the Subject Judge coordinated with the _____ attorney and others to prevent her from proceeding “in a Rule 60(d) Independent Action,” stating the Subject Judge and another judge, without providing legal authority, insisted that the filing must be made in her earlier case. Finally, Complainant alleges the Subject Judge “refused to immediately step aside” and coordinated with others to have a motion to recuse denied as moot and to defraud Complainant, in violation of his oath of office. She attached various documents 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 Complainant's employment 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 Complainant or in favor of others, was otherwise not impartial, was part of a conspiracy, violated his oath of office, concealed evidence or misconduct by others, committed fraud, lied, had a conflict of interest, caused certain statements not to be transcribed, 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