

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90114

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

JAN 27 2021

**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 December 2018 Complainant filed a pro se employment discrimination lawsuit against his former employer, a state agency. The next month, the Subject Judge issued an order dismissing the complaint without prejudice and giving Complainant an opportunity to amend the complaint to remedy deficiencies that had been identified in a magistrate judge’s report. In February 2019 Complainant filed an amended complaint.

In April 2019 Complainant filed a motion in which he requested a default judgment due to the defendant’s failure to respond after service, and the next month, a magistrate judge entered an order granting the motion and directed the clerk to enter a default against the defendant for failure to respond to the summons. In June 2019 Complainant filed a motion for a final default judgment. A few months later, the defendant filed a response in opposition and a motion to quash service of the amended complaint and to vacate the clerk’s entry of default, arguing the proof of service was defective and inaccurate in multiple respects. Complainant filed an objection to the motion to quash and to vacate, arguing that service was properly made on the agency Secretary’s “clerk.”

In October 2019 the Subject Judge issued an order granting the defendant’s motion to quash service and to vacate the default and denying Complainant’s motion for default

judgment as moot. The order stated that Complainant conceded that neither the Secretary of the agency nor his delegate received service. Complainant filed a motion for reconsideration, generally arguing that service on the Secretary's receptionist was proper. The Subject Judge entered an order denying the motion for reconsideration, but giving Complainant additional time to serve the defendant in light of his good faith attempt to complete service.

Complainant then filed another motion for reconsideration of the order granting the motion to quash and to vacate the default, as well as a motion requesting permission to file electronically and a motion to take a deposition by telephone, and the defendant filed a motion to quash a subpoena and for a protective order. In December 2019 the Subject Judge issued an order denying without prejudice Complainant's motion for a deposition and granting the defendant's motion to quash and for a protective order, finding Complainant's attempts to conduct discovery were premature. The Subject Judge also issued an order denying Complainant's second motion for reconsideration and his motion for permission to file electronically.

In January 2020 the defendant filed a motion to dismiss the amended complaint, and Complainant filed a motion for a default judgment and a third motion for reconsideration. The Subject Judge entered an order denying the third motion for reconsideration and the motion for a default judgment, finding the defendant timely responded to the complaint. In February 2020 Complainant filed a motion for clarification of the order, arguing in part that the defendant committed perjury in stating it had not been properly served.

On June 12, 2020, the Subject Judge issued an order granting the defendant's motion to dismiss, dismissing the amended complaint, and denying Complainant's motion for clarification. The order found the defendant was immune from suit as to certain claims and that Complainant failed to state a claim as to the remaining claim, and it provided Complainant with an additional opportunity to file an amended complaint by June 29, 2020. In addition, the order stated that: (1) Complainant's management of the action strongly suggested he would benefit from the advice and assistance of a lawyer; (2) the knowing maintenance of an action despite the defendant's entitlement to immunity might subject the plaintiff to a monetary or other sanction; and (3) Complainant was strongly advised to obtain legal advice and assistance before amending his complaint.

Later in June 2020, Complainant filed a motion requesting an extension until August 31, 2020 to file an amended complaint, and he also filed a second motion for permission to file electronically. The Subject Judge issued an order denying the motion for extension in part, giving Complainant until July 24, 2020 to file an amended complaint. The order also denied Complainant's motion for permission to file

electronically as moot, noting litigants could use an online form to submit documents for electronic filing.

In July 2020 Complainant filed a “Motion to Dismiss the Officer of the Court,” seeking to dismiss the Subject Judge from the case “due to excess of judicial authority, partiality, wanton omission, misconduct, lack of confidence and fraud.” The Subject Judge issued an order denying the motion seeking his recusal, noting Complainant challenged the correctness of several orders, but that the proper means for challenging orders was through an appeal, not a motion for recusal. Complainant filed a motion for reconsideration in which he stated he was not challenging adverse rulings or perceived errors, and the Subject Judge denied the motion.

After that, Complainant filed a “Motion to Disqualify the Officer of the Court” seeking the Subject Judge’s disqualification. On July 29, 2020, the Subject Judge issued an order: (1) making the June 12, 2020 dismissal order the final judgment in the case due to Complainant’s failure to file an amended complaint by the deadline; and (2) denying the most recent motion for recusal. The next day, Complainant filed a “Request for Jurisdictional Authority” in which he, among other things, challenged the Subject Judge’s authority and jurisdiction to issue the July 29, 2020 order. In August 2020 the Subject Judge issued an order denying the motion and directing the clerk of file additional documents seeking reconsideration, recusal, or clarification as a notice to the court, instead of a motion, in light of Complainant’s “belligerent recalcitrance.”

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge: (1) violated and deprived him of his civil and constitutional rights; (2) conspired with the defendant to deprive him of his due process rights and right to a default judgment; (3) exhibited “cronyism”; (4) had the appearance of partiality; (5) violated various statutes; (6) committed a breach of contract; (7) became a “public nuisance”; (8) defamed and intimidated him by stating he would benefit from the advice and assistance of a lawyer; (9) was required to recuse himself because he was biased or prejudiced or had personal knowledge of disputed facts; (10) committed crimes in the course of protecting the defendant; and (11) caused him legal injuries and “psychological and bodily damages.”

Complainant asserts the Subject Judge has caused him to experience “2 years of misrepresentation, misdirection, fraud, untruthful statements, wanton omission, conspiracy in a concert of action” to deprive him of his civil rights. He contends the Subject Judge took an “outstanding” amount of time to respond to his 2019 motion for default judgment, which he asserts violated the Code of Conduct for United States Judges and showed that a “concert of action was taking place with State and Federal agencies.” He states he was notified by an anonymous third party that the Subject Judge “was

waiting for the results of an unlawful investigation” of Complainant, which breached the Due Process Clause.

Complainant alleges the Subject Judge’s October 2019 order granting the defendant’s motion to quash: (1) deprived him of his due process rights by disregarding his service on the defendant; and (2) untruthfully stated that he conceded the proper party did not receive service, which caused him “severe pain and suffering due to stress and anxiety.” Complainant states the Subject Judge was made aware of this “manifest error,” but “fraudulently wanton[ly] omitted all allegations protecting and in favor of the opposing party.” He then states he made clear allegations of perjury, fraud, misrepresentation, and misconduct, but the Subject Judge demonstrated “negligence, wanton omission, fraud and deprivation of rights” in failing to address the allegations, in violation of his oath of office and the Code of Conduct for United States Judges.

Complainant alleges the Subject Judge exhibited bias in response to Complainant’s request for clarification, deprived him of his rights, failed to follow Fed. R. Civ. P. 52 in his order, and acted like a “bully without any [r]egard for the law and consequences with the intent to silence and intimidate.” He alleges the Subject Judge’s orders denying his motions to file electronically denied him of his right to equal protection and caused him physical harm and psychological stress. Complainant states the portion of the Subject Judge’s dismissal order cautioning Complainant and recommending that he obtain the assistance of a lawyer was threatening, intimidating, and abusive and caused Complainant to suffer intense fear, anxiety, and stress.

Complainant takes issue with the denial of his request for extension of time, alleging it constituted an abuse of authority, denied him his constitutional rights, and showed the Subject Judge acted partially and in concert with others to dismiss the case. He also takes issue with the orders denying his motions seeking the Subject Judge’s recusal, alleging the orders omitted certain grounds for recusal and showed the Subject Judge was partial and violated various statutory provisions and Complainant’s constitutional rights. Finally, Complainant generally takes issue with the actions of individuals other than the Subject Judge, and he seeks various types of relief.

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. 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, was partial or biased, committed crimes, was part of a conspiracy, violated the Code of Conduct for United States Judges, treated Complainant 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