

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JAN 27 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90115

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 _____, 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 May 2020 Complainant filed a lawsuit against one defendant and a motion for leave to proceed in forma pauperis (IFP). The next day, a magistrate judge issued an order granting the IFP motion and directing the clerk to submit the file to the district judge for a frivolity determination under 28 U.S.C. § 1915(e)(2). In July 2020 the Subject Judge issued an order stating that the complaint suffered from “numerous problems” and giving Complainant 21 days to file an amended complaint.

The next month, the Subject Judge issued an order noting that Complainant failed to file an amended complaint and dismissing the complaint as frivolous. After that, Complainant submitted various letters, and the Subject Judge issued two orders finding the letters did not affect the dismissal of her case. The record also shows that multiple general orders were entered in the case by a different judge concerning court operations during the COVID-19 pandemic.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge dismissed her case despite that it was assigned to a different district judge. She takes issue with the Subject Judge’s finding that the case was frivolous, and she contends the Subject Judge inaccurately stated she sought monetary damages and stated

she sent him paperwork when they had no communication. She attached 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.

All of Complainant’s allegations concern the substance of the Subject Judge’s official actions, rulings, findings, and orders in the case, and the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.

/s/ Charles R. Wilson

Acting Chief Judge