

CONFIDENTIAL

BEFORE THE ACTING CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90167

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 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 _____, 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 October 2020 Complainant filed an employment discrimination action against two defendants and a motion for leave to proceed in forma pauperis (IFP). The next month, the Subject Judge issued an order granting the IFP motion, but finding the complaint was deficient in several respects and directing Complainant to replead her complaint within 14 days. In December 2020 the Subject Judge issued a report recommending that the complaint be dismissed without prejudice due to Complainant’s failure to comply with the court’s order and for failure to state a claim. In January 2021 a district judge entered an order adopting the report and recommendation and dismissing the case.

The record shows that in October 2020 Complainant filed another employment discrimination action against one defendant and a motion to proceed IFP. The next month, the Subject Judge issued an order granting the IFP motion, but finding the complaint failed to state a claim and directing Complainant to replead the complaint within 14 days. In December 2020 the Subject Judge issued a report recommending that the complaint be dismissed without prejudice due to Complainant’s failure to comply with the court’s order and for failure to state a claim. Later that month, a district judge entered an order adopting the report and recommendation and dismissing the case.

The record also shows that in October 2020 Complainant filed a lawsuit against multiple defendants and a motion to proceed IFP. The next month, the Subject 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).

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant: (1) alleges the Subject Judge violated her constitutional and civil rights; (2) asserts that he questioned the authority of the Equal Employment Opportunity Commission; and (3) complains that he required her to file amended complaints. 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, orders, reports, and recommendations in the cases, 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