

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90184

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 31 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 _____ (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”).

As an initial matter, after Complainant filed her Complaint, she filed three supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2020 Complainant filed a civil rights action against multiple defendants and a motion for leave to proceed *in forma pauperis* (IFP). A week later, the Subject Judge issued an order granting the IFP motion, directing Complainant to file an amended complaint due to “several problems” with the initial complaint, and directing her to clarify the outcome of a certain criminal traffic citation that she referenced. Complainant then filed an amended complaint, and in late August 2020 the Subject Judge issued an order finding the amended complaint did not comply with the prior order and directing her to file a response and a second amended complaint if there was a basis to do so.

In September 2020 Complainant filed a response in which she, among other things, stated she had not consented to have a magistrate judge participate in the case and generally took issue with the Subject Judge’s orders. The Subject Judge then issued an order noting that Complainant was required to use the appropriate complaint form, directing the clerk to provide her with a form for use by non-prisoners, and directing her to file a second amended complaint using the form.

Complainant then filed objections to the Subject Judge's order. In mid-September 2020 the Subject Judge issued an order noting that Complainant's filing was neither an amended complaint nor a proper objection and extending the deadline to file a second amended complaint as a courtesy. Complainant again filed objections to the Subject Judge's order, and she later filed a request for the clerk to issue summons. In late October 2020 the Subject Judge entered an order denying the motion for issuance of summons without prejudice. In January 2021 the district judge issued an order overruling Complainant's previous objections to the Subject Judge's order.

The Subject Judge then entered an order directing Complainant to file a second amended complaint and to comply with the prior orders entered in the case. Complainant filed a response in which she stated the Subject Judge had directed her to use a complaint form for prisoners when she was not a prisoner, and the Subject Judge entered an order stating that Complainant would again be provided a non-prisoner civil rights complaint form. In February 2021 the Subject Judge issued a report recommending that the case be dismissed for failure to prosecute and failure to comply with a court order. The next month, Complainant filed a petition for an evidentiary hearing and a default judgment. After that, the district judge issued an order adopting the Subject Judge's report and recommendation, dismissing Complainant's claims, and denying her petition as moot.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge provided special treatment to the adverse party by blocking the filing of her claim since August 2020, and she contends the case has been idle since then. She states the Subject Judge interrupted the case proceedings and manipulated the narrative of her case by "writing and filing erroneous opinions."

Supplements

Complainant's first supplement is composed of various documents. In the second supplement, she takes issue with the Subject Judge's February 2021 report recommending that the case be dismissed for failure to prosecute, contending the Subject Judge engaged in judicial interference by blocking and interrupting her efforts to pursue the action by entering more than six erroneous and irrelevant orders, recommendations, and demands. She also contends the Subject Judge delayed the proceedings and entered incorrect information in the court's record, which has contributed to the defendants' avoidance of accountability for their actions. She attached various documents to her second supplement.

In the third supplement, Complainant states the case was closed as retaliation for her not agreeing to be a "prisoner/non-prisoner" and not agreeing with the "narrative" being written by the Judiciary," which coincided with the "original agenda" of the defendants. She attached documents to her third supplement.

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.

Furthermore, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, order, report, and recommendations in the case, including her claims of delay, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, she provides no credible facts or evidence in support of her claims that the Subject Judge gave special treatment to the defendants 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