

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 28 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-21-90012 and 11-21-90013

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ and 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 Magistrate Judge _____ and United States District Judge _____ (collectively, the “Subject Judges”), 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 March 2020 Complainant filed a *pro se* employment discrimination action against two defendants and a motion for leave to proceed *in forma pauperis* (IFP). In April 2020 Judge _____ issued an order granting the IFP motion and directing her to file an amended complaint, generally finding the complaint failed to state a plausible claim for relief. Complainant then filed an amended complaint. In August 2020 Judge _____ issued an order directing Complainant to file a second amended complaint, finding the amended complaint did not address the deficiencies identified in the previous order and failed to state a plausible claim for relief.

The next month, Complainant filed a second amended complaint. After that, Judge _____ issued a report recommending that the second amended complaint be dismissed without prejudice for failure to comply with the court’s orders. Over Complainant’s objections, Judge _____ entered an order adopting the report and recommendation, finding in part that Complainant’s argument that she was being held to a higher standard than other *pro se* litigants was meritless. The case was then dismissed.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges Judge _____ April 2020 order: (1) was “fully designed to prevent” her from prosecuting her case; (2) intentionally held her to a higher standard than that of an attorney; (3) showed “complete bias and prejudice” against her and expressed favor and bias toward the defendants; and (4) “sought to rule out all statements of facts” she made. She complains that Judge _____ rejected her amended complaint, states that all of his orders expressed bias and prejudice against her and in favor of one of the defendants, and asserts that his final recommendation “had nothing to do with any of the facts.”

Next, Complainant alleges Judge _____: (1) was also biased and prejudiced against her; (2) “agreed to not look at any of the facts” of her case; (3) refused to accept her statements as true; and (4) held her to a higher standard than that of an attorney. 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.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, findings, rulings, report, recommendations, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ 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 Judges were biased or prejudiced against her or in favor of the defendants or that they 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