

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 21 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90016

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 August 2018 Complainant filed an employment discrimination action against the _____ (“the _____”). After various proceedings, in May 2019 Complainant filed a second amended complaint raising two claims stemming from the defendant’s failure to hire him for jobs under two vacancy announcements, and the defendant filed a motion to dismiss. In January 2020 the Subject Judge issued an order granting the motion to dismiss and dismissing the claims raised in the second amended complaint with prejudice, generally finding that Complainant failed to state a claim on which relief could be granted.

Complainant then filed, among other things, multiple motions to reopen the case based on newly discovered evidence and a motion for sanctions. In the motions, Complainant contended that: (1) the defendant provided a “fraudulent” response to an inquiry under the Freedom of Information Act (“FOIA”); (2) the response established that the second job vacancy announcement was “fake” and “fraudulently created,” as the defendant lacked the authority to create the position; and (3) counsel for the defendant committed fraud by concealing the evidence and misrepresented facts in responses.

In July 2020 the Subject Judge issued an order denying the motions to reopen, motion for sanctions, and other motions Complainant had filed, generally finding he did not establish entitlement to the relief sought and failed to prove by clear and convincing

evidence that the defendant engaged in fraud, misrepresentation, or other misconduct. The order also instructed Complainant to cease filing frivolous motions in the case and stated that, if he continued to do so, the court would entertain a motion by the defendant to revoke his CM/ECF access, impose sanctions against him, issue a filing injunction against him, or issue similar relief.

In August 2020 Complainant filed, among other things, a motion to reopen the case based on newly discovered evidence, arguing that, in another case, a federal district judge acknowledged that the defendant provided fraudulent documentation in the case and fraudulently misrepresented facts in filings. In March 2021 the Subject Judge entered an order denying Complainant's motion to reopen and other motions he had filed, finding in part that he failed to prove by clear and convincing evidence that the defendant engaged in fraud, misrepresentation, or other misconduct. Complainant has filed additional motions to reopen the case.

The record also shows that in June 2020 Complainant filed a "Freedom of Information Act Complaint" against the _____ and another defendant, seeking the release of agency records that he alleged were improperly withheld from him. The defendants moved to dismiss the case. In late July 2020, a district judge who is not the Subject Judge issued an order: (1) discussing Complainant's assertions concerning the _____ allegedly fraudulent response to the FOIA request; (2) finding the complaint failed to state a claim for relief under the FOIA; and (3) granting the defendants' motion to dismiss. There has been additional activity in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge deliberately delayed ruling on his August 2020 motion to reopen, which was based on another judge's acknowledgement that the _____ provided a fraudulent FOIA response in the case. Complainant alleges the Subject Judge attempted to prevent him from submitting the evidence by instructing him to cease filing frivolous motions, when she knew his motion to reopen was not frivolous. Finally, Complainant states the Subject Judge "could be charged" with committing a fraud on the court.

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, findings, rulings, 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 improper or illicit motive, committed fraud on the court, 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