

CONFIDENTIAL

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

MAY 19 2021

**David J. Smith
Clerk**

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

Judicial Complaint No. 11-21-90021

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 June 2020 Complainant filed a civil action against multiple defendants, raising claims under the Fair Labor Standards Act (FLSA) and the Family Medical Leave Act (FMLA). In September 2020 the Subject Judge issued an order: (1) dismissing the FMLA claim with prejudice for lack of subject-matter jurisdiction and failure to state a claim on which relief could be granted; (2) dismissing the FLSA claim without prejudice; and (3) directing Complainant to file an amended complaint that enabled the court to determine the amount in controversy with respect to her FLSA claim. Complainant then filed a “Motion for Certification of Interlocutory Order for Appeal” and a motion for reconsideration, both of which the Subject Judge denied.

After that, Complainant filed a motion for entry of a default judgment and a motion to stay the proceedings pending the disposition of a petition for writ of mandamus she had filed in this Court. This Court later dismissed the mandamus petition. In late October 2020, the Subject Judge issued an order denying the motion to stay, noting Complainant could seek relief as to any perceived errors on direct appeal. Complainant then filed an amended complaint that included another request to stay the proceedings, as well as a reply in which she requested a hearing on sanctions against the defendants.

In November 2020 the Subject Judge issued an order dismissing the amended complaint without prejudice for lack of subject-matter jurisdiction and denying her motion for entry of a default judgment. Complainant filed a motion for relief from the order, for leave to amend, or to transfer her case to the United States Court of Federal Claims, stating in part that the court failed to address her requests to stay the proceedings and for a sanctions hearing. The Subject Judge entered an order: (1) granting in part Complainant's motion for relief from the court's order; (2) vacating in part the order dismissing the case; (3) granting her leave to amend her complaint or to file a motion to transfer; and (4) denying the rest of the relief requested in her motion.

After that, Complainant filed a motion to transfer her FLSA claim to the United States Court of Federal Claims, and the Subject Judge entered an order granting the motion. Complainant filed a notice of appeal. She also filed in this Court another mandamus petition in which she took issue with the district court's failure to immediately transfer her claims and alleged the court engaged in unethical behavior.

In January 2021 the Subject Judge entered an order: (1) stating Complainant obstructed and delayed her own case; (2) noting she had filed another mandamus petition accusing the court of unethical conduct; (3) stating, "The court wishes Plaintiff well but admonishes her to refrain from combative tactics that waste time and money, including her own"; and (4) directing the clerk to continue the stay of the action until February 1, 2021, pursuant to a statutory provision on transfers to the United States Court of Federal Claims. In March 2021 this Court denied Complainant's second mandamus petition.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge violated multiple canons of the Code of Conduct for United States Judges and his oath of office. She also alleges the Subject Judge closed the case in November 2020 without addressing pending motions she had filed and that he later stated her then-pending mandamus petition was "baseless" and a "waste of money."

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. 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 violated the Code of Conduct for United States Judges, violated his oath of office, 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