

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90067

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 30 2021

David J. Smith
Clerk

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 September 2018 Complainant filed a *pro se* amended complaint against a company raising claims of discrimination and retaliation under the Americans with Disabilities Act. Complainant and the defendant later both filed a motion for summary judgment. In January 2020 the Subject Judge entered an order denying Complainant’s motion and granting the defendant’s motion, finding Complainant did not establish a *prima facie* claim of discrimination or retaliation. Complainant appealed.

In November 2020 Complainant filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b) and a request for an indicative ruling, contending newly discovered evidence showed that the defendant used documents and evidence to misrepresent facts and defraud the court. The next month, the Subject Judge issued an order denying the motion, generally finding Complainant failed to establish she was entitled to the relief sought. In January 2021 this Court issued an opinion affirming the district court’s judgment granting summary judgment in favor of the defendant.

The defendant later filed a bill of costs, and, over Complainant’s objections, the Subject Judge granted the bill of costs and ordered costs taxed against Complainant. Complainant filed a motion for reconsideration and a motion to strike the bill of costs and the order granting the bill of costs, arguing the court or clerk attempted to mislead her by

not providing her with electronically filed copies of the documents and by mailing them from a different zip code. In June 2021 the Subject Judge entered an order denying the motion for reconsideration and motion to strike.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge is prejudiced against *pro se* litigants, does not treat *pro se* litigants fairly, and is unable to discharge the duties of his office when a *pro se* litigant is involved. She contends the Subject Judge did not immediately mail her a copy of the bill of costs and the order granting the bill of costs, mailed non-electronically filed copies of the documents, and mailed them from a zip code different from the zip code where the court is located.

Complainant states that the Subject Judge “condones his blatant prejudice against pro-se litigants,” stating that, after she took issue with his actions, he did not mail his order denying her motion for reconsideration and motion to strike for two days. She contends that *pro se* litigants are at an “extreme disadvantage” in the Subject Judge’s court due to the delays in communication and because he “cannot see past his obvious prejudices in how he communicates with pro-se litigants.” Complainant then asserts the Subject Judge purposely delayed communicating with her, which shows he “does not have the same respect for pro se litigants.”

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 above-described 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 was prejudiced against her or against *pro se* litigants, delayed taking action due to an improper motive, 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