

SEP 20 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-21-90075 and 11-21-90076

ORDER

An individual has filed a Complaint against two United States district judges under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351–364, and the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Background

In December 2020, Complainant submitted a Request for Assisted Resolution pursuant to a district court’s Employment Dispute Resolution Plan. Complainant alleged she had been discriminated against and harassed based on her pregnancy and that she had been subjected to abusive conduct. She summarized her allegations as follows.

Complainant worked as a term law clerk for the First Subject Judge. The First Subject Judge was pleased with her work, asked

her to clerk for him for an additional two years, and gave her a raise. When Complainant announced she was pregnant, the First Subject Judge's career law clerk stated she was angry that Complainant was pregnant, treated her differently, and made her job "miserable." When Complainant told the First Subject Judge about the career law clerk's behavior, he did nothing. The career law clerk continued to be Complainant's sole supervisor and the only person who reviewed and edited her work, and the career law clerk "sabotage[d]" Complainant and influenced the First Subject Judge's opinion of Complainant. The First Subject Judge later rescinded the offer for an additional clerkship term and fired Complainant ten days before her daughter was born. A district judge who is not one of the Subject Judges determined the matter was unable to be resolved through the assisted resolution process.

In February 2021, Complainant filed a formal complaint in which she alleged she had been subjected to unlawful discrimination and harassment based on her pregnancy, abusive conduct, and retaliation. The district court filed a response denying that Complainant's pregnancy was a motivating factor in any adverse employment action she suffered, denying any of its employees or judicial officers engaged in abusive or retaliatory conduct toward her, and stating that her complaint should be dismissed.

The Second Subject Judge, as the Presiding Judicial Officer, conducted an investigation of the matter and interviewed Complainant, the First Subject Judge, his career law clerk, his courtroom deputy, and the clerk of the district court. Complainant

provided transcripts of those interviews with her Complaint of Judicial Misconduct or Disability.

A transcript of the interview with the First Subject Judge establishes that he stated that Complainant was not completing her work in a timely manner. The First Subject Judge also made the following statements: (1) “Well, when I read this Complaint I thought if these things are true, then this woman has sandbagged me because she didn’t tell me anything about this horror story that she portrayed here against” the career law clerk; (2) Complainant “talks about me having to placate [the career law clerk] which I found to be specifically very disgusting”; (3) if the EDR plan had been in place earlier, he would have “handled this a little bit differently,” but only in the sense of making more notes about his requests for Complainant to complete the work; (4) he “laughed” when Complainant stated he should have talked to an individual in Human Resources because that individual “doesn’t deal with employee issues”; and (5) when Complainant left, he “was glad she was gone, but I wasn’t mad with her because she had just failed. But this right here – this savage attack on [the career law clerk] – is disgusting. It’s devious and as far as I’m concerned it is corrupt and I don’t want her back and nobody at my courthouse wants her back.” At the conclusion of the interview, the following statements were made:

[First Subject Judge]: Your law clerks have any questions?

[Second Subject Judge]: No.

[First Subject Judge]: You probably want to go to lunch; right?

[Second Subject Judge]: Well, thank you.

[First Subject Judge]. Thank you for everything.

In June 2021, the Second Subject Judge issued a final decision against the Complainant and determined that a hearing was not necessary to resolve the matter. The Second Subject Judge found that the district articulated a legitimate, non-discriminatory reason for terminating Complainant's employment—her poor work performance, including the timeliness and quality of a certain draft opinion and her failure to complete her work in a timely manner—and that Complainant failed to prove any discriminatory animus and had no viable claim of discrimination. The Second Subject Judge then found that, even if Complainant's allegation—that, during an April 2020 telephone call, the career law clerk screamed her frustrations, stated she was furious Complainant got pregnant so soon after starting her clerkship, and stated the baby would get in the way of the career law clerk's son's senior year—were true, the conduct did not rise to the level necessary to prove a hostile work environment. The Second Subject Judge stated that Complainant pointed to no other specific instances where the career law clerk was abusive toward her and found Complainant had no claim for discriminatory harassment or hostile work environment.

Next, the Second Subject Judge determined that Complainant had no claim against the district for abusive conduct as all

communications and actions by the First Subject Judge and the career law clerk were reasonably related to Complainant's work performance. Finally, the Second Subject Judge found that Complainant's retaliation claims failed because there was no causal connection between the protected activity and the adverse employment action and the evidence did not support that a negative reference was provided to a potential employer.

Complainant appealed the decision, and in March 2022, the Eleventh Circuit Judicial Council affirmed the Second Subject Judge's decision. The Judicial Council determined, among other things, that (1) none of Complainant's allegations amounted to direct evidence that she was terminated based on her pregnancy; (2) the district articulated a legitimate, nondiscriminatory reason for her termination—her poor work performance; (3) she “failed to provide evidence from which a factfinder could reasonably conclude that the real reason [the First Subject Judge] fired her was her pregnancy, not her unsatisfactory job performance”; (4) her allegations regarding the career law clerk did not establish pretext with respect to her termination “because they do not show any discriminatory animus on the part of [the First Subject Judge], the decisionmaker who terminated [Complainant's] employment”; (5) the career law clerk's alleged discriminatory animus could not be attributed to the First Subject Judge under a “cat's paw” theory, as it was clear from the record that it was Complainant's work itself, not any negative reports allegedly made by the career law clerk about the work, that was the proximate cause of Complainant's

termination; (6) Complainant did not sufficiently allege severe or pervasive harassment to support a hostile work environment claim; (7) Complainant did not state a viable retaliation claim based on alleged negative employment references; (8) there was “no indication in the record of partiality by” the Second Subject Judge; and (9) Complainant’s suggestion that the First Subject Judge asked the Second Subject Judge out to the lunch at the end of the First Subject Judge’s interview was “a clear mischaracterization of the record.”

Complaint

Complainant alleges that the First Subject Judge (1) “demoted, terminated, and retaliated against” her “on the basis of pregnancy”; (2) “subjected her to abuse from his career clerk”; (3) “refused to remedy the discriminatory situation”; (4) retaliated against her by giving her a negative reference and spreading falsehoods about her work product; (5) “acted deficiently” as an employer and a member of the federal judiciary; and (6) was “extremely unapologetic and bullheaded about his mistakes.” Complainant states that, before she announced her pregnancy, the First Subject Judge was “very pleased” with her work, offered her an additional two-year term in November 2019, and gave her a significant raise in early January 2020. She states that when she notified chambers of her pregnancy in January 2020, the career law clerk “reacted badly to the news,” began to “sabotage” Complainant’s work, and created a hostile work environment. Complainant states that in April 2020, when she asked the career law clerk why she had

treated Complainant so badly, the career law clerk responded, “it’s infuriating to [her]. I mean, you’re pregnant,” and screamed at Complainant that “she did not want her around next year because the baby was going to get in the way of her participating in her son’s senior year events at his private high school.”

Complainant states she reported the career law clerk’s “abusive and discriminatory” behavior to the First Subject Judge the next day, but that he did not see any reason to do anything about it. Complainant contends that the First Subject Judge has never reviewed her work firsthand, but purportedly terminated her because of her poor work product. She states that the day after she reported the career law clerk’s behavior to the First Subject Judge, he took steps to look for another law clerk, and that later, in April 2020, a male term law clerk was hired. Complainant notes that on June 23, 2021, the First Subject Judge rescinded the offer for an additional two-year clerkship, and on August 18, 2020, he told her not to return to the office after her maternity leave. She states her child was born ten days later.

Citing the First Subject Judge’s interview in the proceeding, Complainant asserts the First Subject Judge (1) admitted he did nothing after she reported the career law clerk’s discriminatory behavior to him except to immediately hire a male law clerk to replace her; (2) stated he thought an apology from the career law clerk to Complainant was enough to remedy the situation; (3) “mock[ed]” Complainant and stated he laughed at the thought of talking to Human Resources personnel; and (4) admitted he would

have handled things differently now that law clerks have recourse through the recently established plan for employee dispute resolution. Complainant contends that the First Subject Judge made “several inappropriate comments” during his interview that “paint a clear picture of the discrimination [she] endured as his law clerk and his bigoted attitude towards women.” In support, Complainant cites the First Subject Judge’s statements that (1) he did not want to talk to Complainant about her April 2020 call with the career law clerk on the telephone; (2) he did not want to go into details because he felt like he knew what happened; (3) he did not want to talk to Complainant by himself because it was not good personnel policy in the situation; (4) he was being cautious due to “self-preservation”; (5) he did not see any reason to do anything further about the matter; (6) ““And what was I going to do? Bring them in and say, okay, girls, y’all need to be sweet to each other?””; (6) Complainant ““sat there in my office and it was like I just told her she had a pretty dress on””; (7) ““nobody at the courthouse wants her back””; (8) her allegations were “disgusting,” “devious,” and “corrupt”; and (9) he was relieved when she was gone. Complainant also states that the First Subject Judge referred to her as “this woman” more than once and exhibited a “dismissive attitude and behavior.”

Complainant states that, while her Complaint primarily concerns the First Subject Judge, the Second Subject Judge “has also acted with impropriety regarding his duty to be an impartial and neutral party.” She alleges that during the proceedings, the Second

Subject Judge “operated as though he represented” the district, “steer[ed]” the Respondent’s witnesses and asked them “softball questions,” and “allowed [the First Subject Judge] to monologue through his interview.” She states that at the end of the First Subject Judge’s interview, he “appears to ask [the Second Subject Judge] if he is ready to go eat lunch with him.” She states, “It is clear from these examples of bias and impropriety that Complainant is not getting a meaningful chance to gather evidence and present a case to impartial neutral,” and she complains that [the Second Subject Judge] dismissed her complaint “without the benefit of any discovery or a hearing.”

Discussion

Cognizable misconduct “is conduct prejudicial to the effective and expeditious administration of the business of the courts.” Judicial-Conduct Rule 4(a). Cognizable misconduct includes “creating a hostile work environment for judicial employees” and “intentional discrimination on the basis of . . . pregnancy . . .” Judicial-Conduct Rule 4(a)(2)(C) and (a)(3).

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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.

In addition, the “Commentary on Rule 4” provides as follows:

The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant’s allegations concern the substance of the Second Subject Judge’s decision, the allegations are directly related to the merits of the Second Subject Judge’s decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). With respect to her remaining claims, the Judicial Council’s order and memorandum affirming the dismissal of her EDR complaint determined, among other things, that Complainant failed to prove

that the First Subject Judge’s decision to terminate her employment was based on Complainant’s pregnancy, as opposed to her poor work performance; she was subjected to a hostile work environment; the First Subject Judge retaliated against her based on alleged negative employment references; and the Second Subject Judge was not impartial in the EDR proceedings.

In the light of the Judicial Council’s decision and the materials provided, Complainant’s remaining judicial-misconduct claims are based on allegations lacking sufficient evidence to raise an inference that the First Subject Judge discriminated against her on the basis of her pregnancy, created or allowed her to be subjected to a hostile work environment, retaliated against her by giving her a negative reference and spreading falsehoods about her work product, acted “deficiently” as an employer, or held a “bigoted attitude towards women,” that the Second Subject Judge was biased or partial in the EDR proceedings, or that the Subject Judges otherwise engaged in misconduct. Judicial-Conduct Rule 11(c)(1)(D). For these reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge