

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 29 2021

David J. Smith
Clerk

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90082

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”).

As an initial matter, after Complainant filed her Complaint, she filed a supplemental statement. The filing of the supplemental statement is permitted. *See* 11th Cir. JCDR 6.7.

Background

The record shows that in May 2020 Complainant filed a *pro se* civil complaint against a company, alleging the defendant violated the Fair Credit Reporting Act. She also filed a motion for leave to proceed *in forma pauperis*, which a magistrate judge granted. She then filed, among other things, a motion for an emergency hearing, for injunctive relief, and to allow testimony from an expert witness. In September 2020 the Subject Judge entered an order denying Complainant’s motions, finding her complaint failed to show that she was entitled to relief, and allowing her to file an amended complaint.

In October 2020 Complainant filed an amended complaint, and, after that, she filed multiple motions seeking various types of relief, including a motion for a settlement conference and a motion for summary judgment. In July 2021 she filed documents in which she alleged the defendant had made numerous baseless claims in its pleadings, the Subject Judge had allowed the defendant to violate her due process rights, and the Subject Judge was holding her to a higher standard than opposing counsel.

The same month, the Subject Judge issued an order that, in part: (1) denied all of Complainant's motions; (2) stated that she had a history of asserting frivolous claims; and (3) directing that no papers she submitted were to be docketed as motions requiring action by the court or a response from the defendant without a court order. The Subject Judge also issued an order dismissing the case as frivolous, finding that to the extent Complainant was claiming certain damages, the claims had been settled, and that the remainder of her claims were "outlandish and incomprehensible."

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant asserts the Subject Judge allowed counsel for the defendant to illegally obtain her credit information for the purposes of extorting her. She states she filed motions concerning the defendant's misconduct in the case, and when the Subject Judge was "called out," he immediately dismissed her complaint without a hearing. Complainant further states that the Subject Judge: (1) made rulings that "contradict[ed] the protection of injunction orders provided by" a certain statute; (2) denied her expert witness testimony "[w]ithout reason"; (3) denied her an injunctive order preventing the defendant from reporting inaccurate information about her credit; and (4) violated her civil and constitutional rights. She also appears to take issue with delay in the case. She attached documents to her Complaint.

Supplement

In her supplemental statement, Complainant states the Subject Judge "denied both parties to settle the case which was part of the Settlement Conference."

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.

Furthermore, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

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 allowed the defendant to engage in illegal activity 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