

CONFIDENTIAL

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

OCT 07 2021

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

**David J. Smith
Clerk**

Judicial Complaint No. 11-21-90083

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, finding 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 district judge acknowledged that the defendant provided fraudulent documentation in the case and fraudulently misrepresented facts in filings. In January 2021 he filed a motion to reopen arguing that newly discovered evidence showed that the defendant's attorney concealed evidence pertaining to the "fake" job listed in a vacancy announcement and the fraudulent FOIA response.

In March 2021 the Subject Judge entered an order denying Complainant's August 2020 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 then filed additional motions to reopen the case and other motions. In August 2021 the Subject Judge issued an order denying the motions, including Complainant's January 2021 motion to reopen, as meritless.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge deliberately delayed ruling on his January 2021 motion to reopen with an improper motive to cover up that the defendant's attorney "concealed evidence from the Court for over a year which shows she was aware that" the job vacancy announcement and an FOIA response were fraudulent. Complainant contends that in July 2020 another district judge "acknowledged that . . . the _____ acknowledged the fraud themselves," but the judge refused to provide the information to the Subject Judge, and that, on the same day, the Subject Judge entered an order denying his motions and threatening him with sanctions in an attempt to prevent him from filing another motion to reopen.

Complainant also states that in March 2021 the Subject Judge issued an order denying additional motions he filed and that "it appears that she intentionally bypassed the newly discovered evidence" he provided. Finally, he takes issue with the actions of individuals other than the Subject Judge, and he attached documents to his Complaint.

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, he provides no credible facts or evidence in support of his claims that the Subject Judge 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