

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 07 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90090

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 October 2020 Complainant filed an employment discrimination action against the _____. He then filed multiple motions seeking various types of relief, and the defendant filed a motion to dismiss the complaint, arguing it was barred by the doctrine of *res judicata*. On August 9, 2021, the Subject Judge issued an order: (1) dismissing the complaint with prejudice for the reasons stated in the defendant’s motion to dismiss; (2) enjoining Complainant from filing any new action, complaint, or claim for relief against the defendant related to his employment without a member of the Court’s bar signing the paper; (3) stating that any *pro se* papers filed after entry of the order would be stricken and disregarded; and (4) denying his pending motions.

On August 12 and 16, 2021, Complainant filed motions “Requesting Confirmation of Final Judgment and Demand for Notice of Appeal Rights.” On August 16, 2021, the Subject Judge issued an order: (1) construing the first such motion as a motion for clarification; (2) stating that the August 9 order was final order; (3) noting the injunction did not bar Complainant from appealing the order; and (4) denying his second motion for confirmation as moot. The next day, Complainant filed a third motion requesting confirmation of final judgment and another motion, and those motions were stricken pursuant to the August 9 order. On August 18, 2021, the Subject Judge issued an order

directing the clerk to enter judgment in accordance with the August 9 order, and a judgment was entered in favor of the defendant. Complainant then filed additional motions that were stricken.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge exhibited “egregious behavior” on August 18, 2021, when she “deliberately struck” his third motion for confirmation of final judgment, “but then turned around and granted the stricken” third motion and entered a final judgment per his request. He attached an email 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 treated him in a demonstrably egregious and hostile manner 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