

JAN 10, 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-21-90133

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, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States District Judge _____ (the “Subject Judge”), un-
der the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct
and Judicial-Disability Proceedings of the Judicial Conference of
the United States (“Judicial-Conduct Rules”).

Background

The record shows that in June 2017 Complainant and other individuals filed a civil complaint against multiple defendants raising a claim under the Voting Rights Act, and the plaintiffs filed an amended complaint in August 2017. After various proceedings, in February 2018 the parties filed a consent motion to refer the case to mediation, and the next month, the Subject Judge entered an order granting the motion in part and directing the parties to schedule mediation.

In May 2018 the plaintiffs' attorneys filed a motion to withdraw their representation of Complainant and certain plaintiffs ("the Complainant Plaintiffs"), but sought to continue representing two other plaintiffs ("the Other Plaintiffs"), stating there was a fundamental disagreement between the two sets of plaintiffs as to what the appropriate outcome should be. In July 2018 Complainant filed a motion for sanctions against the plaintiffs' attorneys, alleging in part that they conspired with the defendants and conducted mediation without certain plaintiffs' presence or consent. Complainant later filed a motion for an evidentiary hearing, which the Subject Judge granted.

In May 2019 the Subject Judge issued an order granting the attorneys' motion to withdraw as to the Complainant Plaintiffs. The next month, Complainant filed a motion to "drop" the Other Plaintiffs and to disqualify the attorneys from representing those plaintiffs. At a hearing in July 2019, the Subject Judge stated the hearing was being held only on the issue whether plaintiffs' counsel

acted in bad faith regarding the mediation. The Subject Judge noted that Complainant referred to the matter as an investigation and responded, “This is not the forum for an investigation.” The Subject Judge later denied the motion for sanctions on the ground that there had been no proof of bad faith by the attorneys.

On February 26, 2020, an attorney for the Other Plaintiffs filed a motion to withdraw as counsel. Two days later, Complainant filed a response in opposition, and on the same day, the Subject Judge granted the motion to withdraw. Also on February 28, 2020, another attorney for the Other Plaintiffs filed a motion to withdraw, and the Subject Judge granted the motion the next month. In August 2020 the Subject Judge denied Complainant’s June 2019 motion to drop the Other Plaintiffs and to disqualify counsel.

In February 2021 the Other Plaintiffs filed a Joint Motion for Entry of a Consent Order resolving the dispute. On February 25, 2021, the Subject Judge held a telephone conference to determine whether the Complainant Plaintiffs had consented to entry of the order, and Complainant did not attend the hearing. At one point, the Subject Judge stated, “I’m slightly uncomfortable having a substantive conversation without having, quote, unquote, all of the parties to the action on the phone. For all intents and purposes, this is an ex parte conversation. . . . But going into the substantive issues without giving at least all the parties an opportunity to be on the call, I wouldn’t do that.” The Subject Judge directed the parties to file supplemental briefs concerning the joint motion for entry of a consent order.

Complainant then filed a response in opposition to the joint motion. In April 2021 the Subject Judge entered an order denying the Joint Motion for Entry of a Consent Order because the proposed consent decree affected the rights of nonconsenting parties. In July 2021 the Other Plaintiffs filed a motion for summary judgment. The next month, Complainant filed a motion to recuse the Subject Judge on the ground that she had engaged in illegal and discriminatory acts. Also in August 2021, the Subject Judge entered an order granting the Other Plaintiffs' motion for summary judgment. After that, Complainant filed a second motion to recuse and a notice of appeal. There continues to be activity in the case.

The record also shows that in August 2019 Complainant filed a civil action against multiple defendants, and in January 2020 he filed a motion for leave to file an amended complaint. In September 2020 the Subject Judge issued an order dismissing the complaint without prejudice as a shotgun pleading, denying Complainant's motion to amend his complaint, and allowing him to file a motion for leave to file a second amended complaint.

The next month, Complainant filed a motion for leave to file a second amended complaint, and in December 2020 he filed a motion for leave to file a third amended complaint. On August 5, 2021, he filed a motion to recuse the Subject Judge. On August 9, 2021, the Subject Judge granted Complainant's motion for leave to file a third amended complaint. Later that month, the defendants filed a motion to dismiss the third amended complaint and a motion to

stay discovery. In November 2021 the Subject Judge entered an order granting the motion to stay discovery.

Complaint

Complainant alleges the Subject Judge violated his due process rights at the July 2019 evidentiary hearing by not allowing him to “inquire into events leading to mediation” in support of his motion for sanctions. He also alleges the Subject Judge violated his due process rights by granting two attorneys’ motions to withdraw as counsel. Complainant alleges that the Subject Judge failed to notify the Complainant Plaintiffs about the telephone conference on February 25, 2021, and failed to give them an opportunity to be heard and to respond. He asserts substantive matters were discussed at the hearing and that the Subject Judge admitted she was “in cahoots” with the attorneys, which violated his due process rights. He then alleges the Subject Judge violated his constitutional rights by entering an order on the motion to amend he had filed before ruling on his motion to recuse.

With respect to Complainant’s second case, he states the Subject Judge “delayed this case for as long as she could” and “sat chair in over one hundred-fifty cases where she entered orders on various motions that were filed after August 30, 2019.” He contends the Subject Judge violated his constitutional rights by immediately granting his motion to amend after he filed a motion to recuse. Finally, Complainant alleges the Subject Judge discriminated against him because he is not an attorney, prevented him

from engaging in discovery, and delayed his cases for over a year before taking any action.

Discussion

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.

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, and orders in the above-described cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge acted with an illicit or improper motive, engaged in

improper *ex parte* communications, was in cahoots with others, discriminated against him, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge