

APR 17 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90033 and 11-23-90034

ORDER

An individual has filed a Complaint against a United States district judge and a United States magistrate judge 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

The record shows that in 2021 Complainant filed a *pro se* civil action against the United States of America, which moved to dismiss the complaint. The Subject Magistrate Judge issued an order granting the motion to dismiss in part, dismissing certain claims without prejudice, and directing Complainant to file an amended complaint. Complainant moved for permission to use the electronic-filing system, which the Subject Judge denied on the ground

that Complainant failed to establish that electronic access was necessary. Complainant then filed an amended complaint.

The Subject District Judge later dismissed the action without prejudice after the parties failed to file a case-management report. Complainant filed a motion to reverse the dismissal and to reinstate the action. An attorney then entered an appearance as counsel for Complainant, and after a hearing at which the attorney appeared, the Subject District Judge granted the motion and reinstated the action. Complainant filed a counseled second amended complaint after the Subject Magistrate Judge granted her motion to do so, and the defendant moved to dismiss the second amended complaint.

Afterward, Complainant's attorney filed a motion to withdraw as counsel, citing irreconcilable differences. At a hearing on the motion, the Subject Magistrate Judge asked Complainant's attorney why Complainant could not attend the hearing, and counsel responded that Complainant had been ill and referred to a letter submitted by her doctor. The Subject Magistrate Judge noted that the letter was from a doctor in another state and that it did not explain what her disability was or why she could not be at the hearing. The Subject Magistrate Judge asked if counsel could provide any additional information about Complainant's disability, and counsel responded that he could not. The Subject Magistrate Judge then noted that the case had previously been dismissed and stated that it was "only reinstated upon your appearance in this case" and "Your appearance has, frankly, reopened the case, caused delay, caused additional, you know, trouble with the Court and difficulty

and waste of resources.” The Subject Magistrate Judge then held a recess to allow Complainant to call in to the hearing.

After Complainant called in, the Subject Magistrate Judge granted her attorney’s motion to withdraw. The government then pointed out that Complainant worked for her attorney and was currently in her attorney’s office. The Subject Judge asked the attorney why Complainant could not attend the hearing if she was at the office and asked what her disability was, and the attorney responded that he did not know what her disability was. Complainant stated that no one had the right to ask or to know what her disability was, and the Subject Magistrate Judge responded that the court had a right to know about it because it was relevant to the proceedings. After further discussion, the Subject Magistrate Judge stated that he could “easily issue an order directing the doctor to give me all of the information concerning your medical records and your disability,” and that if issues needed to be addressed “the Court will get information about them or you’ll be sanctioned in relation to this case.”

Complainant then filed multiple motions seeking various types of relief, including another motion to use the electronic-filing system and a motion to recuse the Subject Judges. The Subject Magistrate Judge granted in part Complainant’s motion to use the electronic-filing system. The Subject Magistrate Judge also issued a report recommending that the defendant’s motion to dismiss the second amended complaint be granted on various grounds, and the Subject Judges each issued an order denying the motion to recuse.

Over Complainant's objections, the Subject District Judge adopted the report and recommendation and dismissed the action.

Complaint

Complainant initially states she believes the Subject Judges engaged in misconduct or are unable to discharge the duties of their office due to a disability. She asserts the Subject Judges refused to acknowledge her disability "without public exposure," refused to consider her doctor's letter, excluded her from participating in depositions, violated their oaths of office, dismissed her case because she was proceeding *pro se*, were prejudiced against her based on her age, disabilities, and *pro se* status, issued "contradicting, non-coherent and unpredictable opinions," and improperly failed to recuse themselves from the case. She also asserts the Subject Judges "set[] her up, knowing she couldn't attend to purposely and deliberately hold a pretend deposition in order [to] rack up costs and expenses and make her pay for filing a suit and because they are foul dishonest people with authority who use the law to wrongly cause harm to" her. She states she never consented to having two judges in her case, and that "Having two judges is very confusing and prejudicial in some ways to fairness, equality and justice."

Next, Complainant raises various allegations against the Subject Magistrate Judge, including that he improperly demanded that she publicly provide her medical information, was "not respectful of her privacy," improperly rejected a letter from her doctor because he was in another state, permitted the opposing party

to abuse her and ignore her need for accommodations, “ma[de] up arguments” for the defendant, “prejudicially denied” her request to use the electronic-filing system, made “unreasonable rules,” issued nonsensical orders, addressed issues that were never raised, was prejudiced in favor of the defendant, made decisions based on assumptions, was “exceptionally rude,” and showed “hatred for the handicapped and pro se litigants.” Complainant asserts the Subject Magistrate Judge stated, “The only reason I let you back in this case was because you had a lawyer,” which was “an explicit statement on his view of pro se litigants and is the real reason he dismissed the case.” She contends that the statement does not appear in the transcript of the hearing and states she believes the Subject Magistrate Judge falsified the transcript.

Complainant alleges that at the hearing on the motion to withdraw filed by her attorney, the Subject Magistrate Judge was confused, “was very puzzled about elementary ideas,” failed to ask questions, did not want to hear explanations, “got twisted up,” “got irrationally mad about a sick old lady not traveling 120 miles while weak and sick,” and showed no compassion. She states the Subject Magistrate Judge “was overcome with anger and threatened in order to scare [Complainant] with subpoenas and arrest,” “meant to cause a harmful psychological impression and anxiety to an elderly person,” misrepresented facts concerning how medical records are obtained, was disrespectful towards her, and did not allow her to submit medical records under seal.

Complainant states she believes the Subject Magistrate Judge and the defendant's attorney "conferred on making an in-person hearing so they could see what [Complainant's] disability was," "worked together to dismiss this case" and to require her to pay for depositions that could not take place, and engaged in improper *ex parte* communications. Complainant states that the Subject Magistrate Judge "may be emotionally or mentally disabled to some degree (in every degree in which he dealt with [Complainant]), making it impossible to receive fair treatment." She makes an "emergency request" that the Subject Judges be removed from her case. She also takes issue with the actions of individuals other than the Subject Judges, and she attached documents to her Complaint.

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.

The Complaint fails to present a basis for a finding of misconduct. To the extent Complainant's allegations concern the substance of the Subject Judges' official actions, rulings, findings, report, and orders in the above-referenced case, the allegations are directly related to the merits of the Subject Judges' decisions or procedural rulings. Judicial-Conduct Rule 11(c)(1)(B). Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, were biased or prejudiced, discriminated against Complainant, treated her in a demonstrably egregious and hostile manner, made misrepresentations, colluded or conspired with the defendant or its attorney, falsified documents, engaged in improper *ex parte* communications, suffered from a disability, or 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