

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

DEC 08 2023

CIRCUIT EXECUTIVE

CONFIDENTIAL

Before the Judicial Council of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90090 and 11-23-90091

ORDER

Before: WILSON, ROSENBAUM, and BRANCH, Circuit Judges; COOGLER and WALKER, Chief District Judges.

Pursuant to 11th Cir. JCDR 18.3, this Judicial Council Review Panel has considered the materials described in JCDR 18(c)(2), including petitioner's complaint, the order of Chief United States Circuit Judge William H. Pryor Jr., and the petition for review filed by petitioner. No judge on this panel has requested that this matter be placed on the agenda of a meeting of the Judicial Council.

The Judicial Council Review Panel hereby AFFIRMS the disposition of this matter by Chief Judge Pryor. The petition for review is DENIED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

AUG. 08 2023

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint Nos. 11-23-90090 and 11-23-90091

ORDER

An individual has filed a Complaint against a United States magistrate judge and a United States district 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 2022 Complainant filed a *pro se* employment-discrimination complaint against multiple corporate and individual defendants. The Subject Magistrate Judge entered an order striking the complaint on the ground that it was a shotgun pleading, and Complainant filed an amended complaint. The corporate defendants later filed motions to dismiss the amended complaint.

Complainant filed a motion to expedite discovery, a motion for a temporary stay, and a motion for an expedited ruling on her motion to expedite discovery. The Subject Magistrate Judge entered an order denying the motion for expedited discovery and denying Complainant's other two motions as moot. Complainant filed another motion for a temporary stay, and the docket reflects that the motion was submitted to the Subject Magistrate Judge. Complainant then filed an "Urgent Motion to Vacate a Referral" contending in part that the Subject Magistrate Judge improperly ruled on the motion to expedite discovery because the motion referenced a dispositive motion and the parties had not consented to have a magistrate judge rule on dispositive motions. Complainant also filed objections to the order denying the motion for expedited discovery and responses to the motions to dismiss.

The Subject Magistrate Judge then issued an order and report denying Complainant's motion for a temporary stay and recommending that the corporate defendants' motions to dismiss be granted. The Subject Magistrate Judge also recommended that the individual defendants be dismissed if Complainant did not serve them within 14 days and noted that Complainant's Urgent Motion to Vacate a Referral and objections to a previous order remained pending. The Subject District Judge issued an order noting that Complainant did not file objections to the report and recommendation and did not serve the individual defendants, adopting the report and recommendation, dismissing all claims, and denying all pending motions as moot. On the same day, Complainant filed, among other things, a motion to disqualify the Subject Judges.

Complaint

Complainant alleges the Subject Judges “circumvented the Federal Rules of Civil Procedure to render a decision that favored the defendants.” She asserts that “[i]t was concealed” that she did not consent to have a magistrate judge preside over the case, that the Subject Magistrate Judge “manipulated the system” and issued a report before certain motions had been ruled upon, and that the Subject District Judge “allowed” and “went along with this.” Complainant asserts the “Docket and Hearing page” were altered to conceal that motions to dismiss were submitted to the Subject Magistrate Judge instead of the Subject District Judge, which supported that the Subject Magistrate Judge “had positioned herself to be the presiding Judge.”

Complainant contends that the Subject Magistrate Judge showed bias, “echoe[d]” defense counsel, defamed her, “went out of her way to create a very damaging depiction of” her to protect the defendant, improperly stated that she had an “alleged” diagnosis, intentionally omitted certain information, showed partiality by referring to her previous case in which the Subject Magistrate Judge was involved, made false statements concerning her allegations, and made other false statements, including that her claims were time-barred and that she did not pursue a retaliation claim.

Complainant further asserts the Subject District Judge “never acknowledged” several motions she filed trying to stop or slow what she perceived to be “nefarious acts” by the clerk’s office and the Subject Magistrate Judge. She states her motion to vacate

the referral “was discreetly removed from the top of the Docket Report” so the Subject Judges could “render their desired ruling” in favor of the defendants. Complainant contends the Subject Judges closed the case “using a technicality,” miscalculated the deadline for her to file an answer, failed to rule on certain motions, showed prejudice against a *pro se* litigant, were biased in favor of the defendants, and acted to help the defendants avoid providing certain evidence. She states she “question[s]” the adoption of the report and recommendation on the same day she filed a motion to disqualify the Subject Judges. 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, recommendations, and orders in the above-described 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 otherwise not impartial, acted to assist the defendants, manipulated or concealed matters, defamed her, made false statements, 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