



CONFIDENTIAL

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

Judicial Complaint Nos. 11-13-90058 and 11-13-90059

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Circuit Judges _____
and _____ of the U.S. Court of Appeals for the _____ Circuit, 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 U.S. Circuit
Judges _____ (“Subject Judge I”) and _____ (“Subject Judge II”),
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.

Background

The record establishes that on December 8, 2010, a _____ District of
_____ grand jury indicted Complainant and others with eight firearms-related
offenses. Complainant avoided arrest, became a fugitive, and was arrested in
_____ on August 5, 2011. On August 22, 2011, he was arraigned in the
_____ District of _____, requested and received the appointment of
counsel, and pled not guilty.

On September 7, 2011, a magistrate judge held a “pretrial conference” with
the prosecutor and Complainant’s counsel at which Complainant’s counsel
informed the court that Complainant wanted to represent himself. In response, the
magistrate judge scheduled a Faretta hearing for September 21, 2011. Prior to the
hearing, Complainant filed five pro se motions---to dismiss the indictment for lack
of jurisdiction; to suppress evidence; for the production of information via the
Freedom of Information Act; to dismiss for improper service---and a petition for a
writ of mandamus seeking the relief sought in the motions.

At the Faretta hearing on September 21, the magistrate judge examined Complainant regarding his request to proceed without counsel. Complainant advised the court that he wished to be represented by court appointed counsel rather than proceed pro se. The magistrate judge disregarded the pro se motions Complainant had filed and stated that on October 4, 2011, she would certify the case ready for trial if no motions were filed.

On October 3, 2011, Complainant issued a writ of mandamus to obtain rulings on the motions he had filed pro se. The writ asked the court to take judicial notice that “[e]ven my acceptance of counsel was made from fear subtly [sic] created by the courts, implying that without an attorney, going to trial would result in my imminent doom.”

On October 26, 2011, the government, citing Complainant’s pro se filings, moved the court for a psychiatric evaluation of Complainant. On October 28, the magistrate judge granted the motion, ordering a psychological examination to determine his competency to stand trial and his sanity at the time of his offense. On November 8, 2011, Complainant filed a “writ of non-consent” to the examination. Complainant was subsequently examined and was found competent to stand trial.

On January 9, 2012, the Clerk of the District Court received a letter from Complainant announcing that he was releasing his court appointed attorney and demanding the dismissal of the indictment on Speedy Trial Act grounds. He followed the letter with a notice, filed on January 12, that he was exercising his right to release his court appointed attorney.

On February 23, 2012, at a hearing held by the magistrate judge, Complainant informed the court that he did not wish to represent himself and agreed that the court appointed attorney should represent him. At this point, he announced that he was withdrawing all of his motions except the motion to dismiss the indictment on Speedy Trial Act grounds, which remained pending.

On May 8, 2012, the grand jury returned a superseding indictment, charging Complainant with 13 firearms-related offenses. The same day, Complainant’s counsel moved to withdraw, representing that Complainant had repeatedly filed pro se motions against his advice, refused counsel’s visits to the jail, and failed to respond to counsel’s attempts to communicate with him. The next day, May 9, Subject Judge I, who was then a district judge, met with counsel, then held a pretrial conference in open court in Complainant’s presence. During the meeting

with counsel, which was transcribed by a court reporter, Subject Judge I stated that her inclination was that counsel should continue to represent Complainant.

What I am thinking, Mr. . . ., is that you will represent him in every way. If he wants to keep filing these pleadings that I don't really even know what they are, I will ask him not to, but I gather he will continue to do it anyway.

After the prosecutor informed the court that the government may make Complainant a plea offer, the court emphasized that, if an offer were forthcoming, the prosecutor and defense counsel would have to communicate it to Complainant off the record and in the court's absence so that the court would be unaware of it--- and that they should inform Complainant that the court was not "pushing a plea" or "wanting him" to accept any plea arrangement the prosecutor might offer. The court told counsel that should there be "a plea afoot," the court would appreciate prompt notification so it could schedule another proceeding.

At the pretrial conference that followed, the court held a Faretta hearing (in response to counsel's motion to withdraw) to determine whether Complainant would be able to represent himself, and following an exchange with Complainant concluded that he would be unable to do so. Complainant refused to plead to the superseding indictment, so the court entered a not guilty plea for him and informed the parties that the trial of the case would begin on May 21, 2012.

On the first day of trial, May 21, before jury voir dire began, Complainant filed pro se a "Notice of Bias and Prejudice and Revocation of All Assumed Powers of Attorney." The Notice contained 31 paragraphs. Among them were these statements: "I claim foreign sovereign immunity." "The judge has a generally negative predisposition towards . . . citizens foreign to the United States corporation structure and the military industrial complex, those who are American nationals." "Affiant never accepted any representation from my counsel." "I reserve the right to represent myself." "The judges have shown bias and prejudice in their words and actions." "The judge usurped the authority and judgment of a licensed psychologist and deemed affiant competent." The court denied Complainant's motion to dismiss the indictment, and the voir dire of the jury panel began.

On May 24, 2012, the jury found Complainant guilty on all 13 counts of the superseding indictment.

On July 12, 2012 (seven months prior to his sentencing hearing), Complainant filed a complaint against Subject Judge I pursuant to the Judicial Conduct and Disability Act of 1980 (the "Act"), 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"). Judicial Complaint No. _____.

The Complaint in No. _____

In his complaint, Complainant alleged that the grand jury's return of the superseding indictment was vindictive; that Subject Judge I is part of a conspiracy to deny him his constitutional rights; that he never requested or accepted counsel; that on one occasion, his counsel "disclosed the ex parte desires of the Judge" in stating that "the Judge told me that I must do whatever I can to stay on the case, and a[g]gressively try to get him to plea out"; and that Subject Judge I was biased against him as he asserted in a motion to recuse the judge.

Complainant focused on the May 9, 2012, pretrial hearing and the trial that began on May 21, 2012. At the May 9 hearing, Subject Judge I allegedly exhibited unprofessional conduct, failed or refused to answer some of his questions, interrupted and became irate with him, imposed a "double agent attorney" upon him, threatened to remove him from the courtroom during trial if he spoke out, and generally treated him in a biased and degrading manner. In response to his question by what authority Subject Judge I found him incompetent to represent himself, the judge made what he "took as [a] racial" remark, in that the judge "made a stab at ebonics," stating "'By the same authority as, how do they say, yo mamma, cuz I said so.'"

Complainant alleged that during his trial, Subject Judge I allowed the government to admit uncorroborated and irrelevant evidence and false testimony, failed to consider his proposed jury charges, and allowed the government to proceed without jurisdiction and without informing him of the nature of the charges against him. Complainant also alleged that Subject Judge I allowed the government to proceed without producing "the real party in interest," "the corpus delicti," or a "notice letter of acceptance for the locations where the alleged actions or om[issions] occurred." Complainant stated that Subject Judge I referred to him as a "Sovereign Citizen" and "made negative remarks regarding Sovereigns." Finally, he took issue with the _____

denial of his Petition for Writ of Mandamus, submitting that the petition contained further evidence of the conspiracy against him. In his supplemental statement, Complainant reiterated many of his previous allegations, and complained that he was forced to appear at trial in shackles and in prison garb that did not fit properly.

The Disposition of Complaint No. _____

On August 6, 2012, the _____ of the _____ Judicial Circuit entered an order dismissing Complainant's complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(ii) and (iii), and JCDR 11(c)(1)(A), (B), and (D). The order stated that to the extent Complainant's allegations concerned the substance of Subject Judge I's orders and rulings in Complainant's criminal case, or any delay in ruling on his submissions, those allegations were directly related to the merits of the judge's decisions or procedural rulings and, pursuant to JCDR 3(h)(3)(A), were not cognizable under 28 U.S.C. § 351(a). As the Commentary on Rule 3 states,

Rule 3(h)(3)(A) 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 power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling. Any allegation that calls into question the correctness of an official action of a judge – without more – is merits-related.

Regarding the May 9, 2012, pretrial hearing, the order stated that even if Complainant's allegations concerning the Subject Judge I's statements and behavior at the hearing were true, the judge's conduct did not rise to the level of cognizable misconduct. See Liteky v. United States, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1157, 127 L.Ed.2d . 474 (1994) (addressing when a judge must recuse due to bias and providing that bias or partiality is not established by "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display").

Finally, the order stated that "[a]part from the decisions or procedural rulings that Complainant perceives are adverse to him, he provides no credible facts or evidence in support of his claims that the Subject Judge was biased

against Complainant, was part of a conspiracy, concealed evidence of wrongdoing, acted as an advocate for the government, engaged in any improper ex parte communications, or otherwise mistreated Complainant.”

* * *

The Instant Complaint against Subject Judge I, No. 11-13-90058

Background

The background (indicated above) against which Complaint No. _____ was filed is applicable here with the following additions:

Between the return of the jury’s verdicts on May 24, 2012, and his sentencing hearing on February 13, 2013, Complainant filed several pro se motions for various kinds of relief, a petition for a writ of mandamus, which was denied, and an appeal, which was dismissed for lack of jurisdiction. One of his filings was a request that he be permitted to represent himself at sentencing and that subpoenas be issued directing the U.S. Government to produce various pieces of information. Subject Judge I granted his request to represent himself at sentencing but denied his request for the subpoenas because the information he sought was irrelevant for sentencing purposes.

At the February 13 sentencing hearing, Complainant stated that he thought that the prosecutor had to submit proof under the preponderance of the evidence standard. Subject Judge I responded, “Well, then, you assumed incorrectly. He does not have to prove anything today here. We had a trial.” The judge then overruled Complainant’s objections to certain sentencing enhancements, and sustained his objection to receiving an enhancement for his role in the offense. The judge sentenced Complainant to a total term of 137 months of imprisonment. Judgment was not entered, however, until June 5, 2013. That day, prior to entering judgment, Subject Judge I entered an order describing a “‘Sovereign Citizenship’ Phenomenon” that certain inmates were using as a tactic in criminal proceedings, denied Complainant’s motion to dismiss based on the Speedy Trial Act, and denied the other pro se motions he had filed. Complainant appealed the judgment--- his convictions and sentences. They were affirmed, _____.

The Instant Complaint

In the Instant Complaint, Complainant repeats the gist of what he alleged in Complaint No. _____, adding the following:

Subject Judge I changed his “plea to the jurisdiction” to a plea of not guilty and relieved the government of its burden to prove jurisdiction, the existence of a victim, facts used to enhance Complainant’s sentence, and “corpus delicti.” The judge ignored various arguments Complainant made and disregarded motions and other materials he had filed. Subject Judge I “or someone with as much authority” conspired with the clerk to have “someone not file, and discard, documents prepared and sent” by Complainant, and conspired with the stenographer to alter trial transcripts and to deny Complainant requested transcripts. Referring to the May 9, 2012, pretrial conference, Complainant alleged that Subject Judge I made “highly unprofessional, politically, racially biased remarks,” addressed him in a “negative tone” as a “sovereign citizen,” told him that he would go to trial and not speak or else he would be removed from the courtroom to watch the trial from a cell. And at trial, he was “shackled for the entire trial, without reasoning.”

Complainant alleged that at sentencing, Subject Judge I showed favoritism for the government, relieved it of its burden of proof; allowed him to represent himself without warning him of the dangers of self-representation in violation of his constitutional rights; denied him due process by ignoring the government’s claims that he was exhibiting irrational behavior; improperly enhanced his sentence; and entered judgment (on June 5, 2013) more than 90 days after the imposition of sentence (on February 13, 2013).

Complainant represents that two witnesses are prepared to testify that his appointed counsel revealed to them “a whole plan that was devised by the judge.” The witnesses “are _____ twenty plus year veterans and _____ . . . of _____ of _____.” Counsel purportedly told the witnesses that he had attempted to end his representation of Complainant and that Subject Judge I denied those requests and “told him that he needs to stay with the case no matter what; compel [Complainant] to take a plea; discourage him from filing motions and going to trial; warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he loses trial”

Complainant also represents that several of his friends and family members “have witnessed most of these events in person, and they have substantively lowered their faith and confidence in the lawful process and nature of the court system.” Complainant then submits that the case of “_____” shows a pattern of “rogue behavior” by Subject Judge I as well as violations of the judge’s oath of

office, constitutional rights, and rules of procedure. He states that Subject Judge I targeted him because he “chose to fight and challenge” the habitual rule and law breaking that occurred, and that the judge “dislikes” his passion, lack of fear, and desire to exercise his rights. He also believes that his criminal history “fueled [Subject Judge I’s] prejudgment as to his guilt.” Finally, Complainant states that a “Judge” has “conspired with a known felon and murderous terrorist.”

Analysis

Complainant’s allegations that repeat in essence the allegations made in support of Complaint No. _____, i.e., allegations “directly related to the merits of” Subject Judge I’s decisions or procedural rulings and statements and behavior Subject Judge I made or exhibited at the May 9, 2012, pretrial conference were considered in the disposition of Complaint No. _____ are therefore dismissed pursuant to JCDR 11(c)(2). As for the decisions or procedural rulings Subject Judge I made between Complainant’s trial and the filing of the Instant Complaint on May 14, 2013, JCDR 3(h)(3)(A) renders them beyond review.

The Instant Complaint contains allegations (1) of misconduct unrelated to the merits of judicial decisions and (2) rulings made by Subject Judge I at the May 9, 2012, pretrial conference and prior to the filing of Complaint No. _____, but not included in Complaint No. _____, that do not rise to the level of cognizable misconduct. See Liteky v. United States, 510 U.S. 540, 555-56, 114 S. Ct. 1147, 1157, 127 L. Ed.2d 474 (1994).

The Instant Complaint contains allegations not made in Complaint No. _____. They are,

- 1) Subject Judge I “or someone with as much authority” conspired with the clerk to have “someone not file, and discard, documents prepared and sent” by Complainant, and conspired with the stenographer to alter trial transcripts and to deny Complainant requested transcripts.

Complainant does not identify the documents not filed. The criminal case docket sheet contains _____ entries. Over 70 of the entries reflect motions or other items filed by Complainant pro se. And the transcripts filed in his appeal of his convictions and sentences were accepted without question. Like the conspiracy allegation Complainant made in Complaint No. _____, the conspiracy allegation in the Instant Complaint lacks

credible factual support. This conspiracy allegation is therefore dismissed as frivolous. See JCDR 11(c)(1)(C).

- 2) Subject Judge I targeted him because he “chose to fight and challenge” the habitual rule and law breaking that occurred, and that the judge “dislikes” his passion, lack of fear, and desire to exercise his rights. He also believes that his criminal history “fueled [Subject Judge I’s] prejudice as to his guilt.”

These comments are nothing more than Complainant’s reaction to Subject Judge I’s management of the criminal case in Complainant’s presence and the adverse rulings he received, many of which were handed down by the magistrate judge to whom Subject Judge I referred several of Complainant’s filings. Because he suffered adverse rulings and the case was not handled to his satisfaction, Complainant concludes that Subject Judge I was biased against him. JCDR 3(h)(3)(A) excludes the quoted comments from the definition of judicial misconduct; they are directly related to the merits of decisions or procedural rulings.

- 3) Complainant represents that two witnesses, who are “_____ twenty plus year veterans and _____ . . . of _____ of _____,” will testify that his appointed counsel revealed to them “a whole plan that was devised by the judge.”¹ According to the two witnesses, Complainant’s counsel said that he had attempted to end his representation of Complainant, but Subject Judge I denied those requests and “told him that he needs to stay with the case no matter what; compel [Complainant] to take a plea; discourage him from filing motions and going to trial; warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he loses trial”

¹ After Complainant filed the Instant Complaint, he was asked to provide written statements from the two individuals, Mr. ____, and Mr. ____, whom Complainant identified as witnesses willing to testify as to certain statements his attorney, Mr. ____, made to them. By letter dated June 21, 2013, Complainant responded that he had been moved and had been unable to contact his “two witnesses, Mr. ____ and a Mr. ____.” Complainant said that he “created an interr[o]gatory for each of the two witnesses,” and “asked would they sign it and forward it directly to the Conference.” Complainant stated that “both did agree that they would happily tell what they knew in open court if they were subpoena[ed].” To date, nothing has been submitted from either witness pertaining to Complainant’s Complaint of Judicial Misconduct or Disability.

- 4) Complainant included part of this quotation---Subject Judge I “told him that he needs to stay with the case no matter what; compel [Complainant] to take a plea”---in Complaint No. _____, “the Judge told me that I must do whatever I can to stay on the case, and a[g]gressively try to get him to plea out.”
- 5) In the Instant Complaint, Complainant added: “discourage him from filing motions and going to trial; warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he loses trial”

The order in Complaint No. _____ disposed of the comment “told him that he needs to stay with the case no matter what; compel [Complainant] to take a plea.” That comment is therefore disregarded. See JCDR Rule 11(c)(2). The focus is on what is new: “discourage him from filing motions and going to trial; warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he loses trial”

“Discourage him from filing motions” is frivolous. Throughout the prosecution of the case and prior to the trial, Complainant’s counsel did all within his power to discourage Complainant from filing pro se motions, but he ignored counsel’s advice. Subject Judge I did not order Complainant to stop; instead, the judge accepted the motions and in the end, after defense counsel had been discharged and Complainant was proceeding pro se, the court ruled on the motions.

“Discourage him from . . . going to trial” is frivolous. Subject Judge I set the trial date at the May 9, 2012, pretrial conference, in Complainant’s presence, for May 21, 2012, and did nothing to inhibit Complainant’s right to stand trial. The comment is frivolous.

- 6) The comment “warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he loses trial” It is assumed that “continues either” refers to “filing motions” and “going to trial,” that Complainant would receive the maximum sentence if he did either.

Complainant’s counsel, in a letter to the undersigned, said this with respect to the two _____ witnesses Complainant refers to as the

recipient of comments from Complainant's attorney. "I do not recall any conversation with Mr. ___ or Mr. ___ of _____ and do not believe I know either of them. My notes do not reflect the names of the officer who supervised visitation. . . . I do make it a strict policy not to discuss anything concerning my cases with detention officers or any others with the possible exception of matters of public record (i.e., I'm here to see Mr. ___ because he filed a motion; we have a sentencing coming up or a trial coming up)." "I would never have said that [Subject Judge I] told me that I needed to stay on the case no matter what because that never happened."

About the "discouraging [Complainant] from going to trial," counsel said: "[Subject Judge I] never urged me to make any effort to consider a plea. I admittedly did push pretty hard for him to consider a plea because of the vast difference between the plea offer and my calculation of the sentencing guidelines."

I went over [Complainant's] plea options with him repeatedly and regularly. He had a very strong case against him and had been offered a very good plea recommendation (36 months). Any perceived pushing toward a plea would have been my efforts to ensure that [Complainant] understood the risk he was taking and that the Government really could send him to prison. Throughout my representation of him, [Complainant] claimed that the Government had no jurisdiction over him. [Subject Judge I] sentenced [him] to two months from the low end of the guidelines.

The prosecutor's recollection of the plea negotiations was "in line with mine other than that he remembered the final plea offer as being around 5 years rather than just over 3." He attempted to interview "the two _____ mentioned" but the _____ regulations precluded an interview.

- 7) Subject Judge I, in a letter to the undersigned, denied Complainant's allegations of judicial misconduct, including the allegation that Complainant's attorney "need[ed] to stay with the case no matter what; compel [Complainant] to take a plea; discourage him from filing motions and going to trial; warn him that if [Complainant] continues either that the Judge will (and did) give him the maximum sentence available if he

loses trial” Regarding the “maximum sentence available, Subject Judge I said this:

[Complainant] has asserted that I did, in fact, impose on him the maximum sentence available. . . . I imposed a 137-month sentence. The maximum sentence available, however, was 90 years. (Counts 1-8 carried a 5-year maximum each; Counts 9-13 carried a 10-year maximum each.) The PSR had calculated the defendant’s guidelines as being an Offense Level 30/Criminal History Category VI, which called for a range of 135-168 months. I, however, declined to impose a 2-level adjustment for an aggravated role, which decision served to lower the offense level to 28 and yielded a range of 119-137 months. I imposed a sentence at the top of this lowered range.

What Complainant’s counsel and Subject Judge I represent is consistent with the record. That counsel would have said to the two _____ what Complainant represents is at total odds with the record of the criminal prosecution and defies credulity. In short, there is no credible evidence to support the notion that Subject Judge I penalized Complainant for filing pro se motions and going to trial, instead of pleading guilty, by imposing the “maximum sentence available.”

Complainant’s complaint is dismissed as to Subject Judge I for the reasons stated above.

* * *

The Instant Complaint against Subject Judge II, No. 11-13-90059

Complainant alleges that in reviewing his allegations of judicial misconduct in Complaint No. _____, Subject Judge II “justified, supported, or protected [Subject Judge I] even in light of [Subject Judge I’s] “clear violations, and that [Subject Judge II] “dismisses anything against her and grants everything that is in [that judge’s] favor.”

Analysis

To the extent Complainant’s allegations concern Subject Judge II’s order dismissing Complaint No. _____, the allegations are directly related to the

merits of Subject Judge II's decisions or procedural rulings. But apart from the decisions or procedural rulings that Complainant perceives are adverse to him, he provides no credible facts or evidence in support of his allegations that Subject Judge II engaged in judicial misconduct.

In that the allegations of the Instant Complaint against Subject Judge II are "directly related to the merits of a decision or procedural ruling," the Instant Complaint is dismissed under JCDR 11(c)(1)(B). To the extent the Instant Complaint is "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists," it is dismissed under JCDR 11(c)(1)(D) of Addendum Three.



Acting Chief Judge