

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
DEC 18 2015
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL
BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint Nos. 11-15-90135 through 11-15-90137

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____ and U.S. District Judges _____ and _____ of the U.S. 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 Magistrate Judge _____ and United States District Judges _____ and _____ (collectively, “the Subject Judges”), 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”). Judge _____ passed away in _____.

Background

The record shows that in September 2008 a federal grand jury indicted Complainant on two firearm-related offenses. Judge _____ then issued an order granting the government’s Motion for Writ of Habeas Corpus Ad Prosequendum, directing that Complainant be present at a certain hearing. In January 2009 Complainant pleaded guilty to one of the charges, and Judge _____ later sentenced him to a term of 188 months of imprisonment. A couple of years later, Judge _____ granted the government’s motion to reduce Complainant’s sentence, imposing a sentence of 152 months.

In October 2012 Complainant filed a “Motion to Remand” in which he argued, among other things, that the federal court had improperly removed the action from the state court, where he was charged with the same offense, and that the federal court did not have subject matter jurisdiction over the criminal case. In April 2015 Judge _____ denied the motion, noting that the case had not been removed from state court and explaining that both the federal government and the individual states have jurisdiction over criminal offenses, such that an individual could be prosecuted by both the federal and state governments for the same offense.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that Judge _____ did not forward a copy of the Writ of Habeas Corpus Ad Prosequendum to him or the state court, which “caused the subject matter jurisdiction” to remain in the state court. Complainant states that after he pleaded guilty to federal and state charges, he was informed that the district court “illegally or improperly” removed his case from the state court in violation of 28 U.S.C. § 1446, and that both the federal and state court “had the same subject matter of litigation based upon the same course of events pending at the same time,” which he contends violates a 1922 Supreme Court decision.

Complainant states that he has “come across other federal inmates, who are of African-American descent also, that have been prosecuted the same way,” and he lists his case and four other cases. He asserts that there is corruption in the district court and that it is his “firm belief” that the Subject Judges violated their oaths of office “by abandoning their neutrality and, instead, have exhibited bias by targeting African-Americans for federal prosecution.” Complainant attached various documents to his Complaint. In one of the attached documents, Complainant alleges that Judge _____ issued “FAKE/fraudulent writs,” and that the Subject Judges “are making up fabricated stories to the Grand Jury to get an Indictment.”

Discussion

Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge _____, in light of Judge _____ death, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge _____.

Judge _____ and Judge _____

Rule 3(h)(3)(A) provides that cognizable misconduct does not include “an allegation that is directly related to the merits of a decision or procedural ruling.” The Rule provides that “[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related.” *Id.* The “Commentary on Rule 3” states in part:

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.

To the extent Complainant’s allegations concern the substance of Judge _____ and Judge _____ official actions, findings, and orders entered in the case, the allegations are directly related to the merits of those judges’ decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he provides no credible facts or evidence in support of his claims that Judge _____ and Judge _____ were racially biased, violated their oaths of office, or otherwise engaged in misconduct.

With respect to Judge _____ and Judge _____, the allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” and the Complaint “is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists.” 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** to the extent it concerns Judge _____ and Judge _____.



Chief Judge