

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
DEC 17 2015  
Amy C. Norenberg  
Acting Clerk of Court

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

**Judicial Complaint No. 11-15-90140**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

**IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, U.S. District Judge for  
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 District Judge \_\_\_\_\_ (the “Subject Judge”), 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”).

As an initial matter, after Complainant filed his Complaint, he filed two supplemental statements. The filing of the supplemental statements is approved. See 11th Cir. JCDR 6.7.

Background

The record shows that in January 2012, a federal grand jury returned a superseding indictment charging Complainant with one count of conspiracy to commit mail, wire, and bank fraud, three counts of wire fraud, one count of mail fraud, one count of bank fraud, and one count of making a false statement to a federally insured institution. The indictment set out, among other things, that Complainant had conspired with another individual to obtain a loan from \_\_\_\_\_ by falsely claiming that Complainant had over \$ \_\_\_\_\_ on deposit in \_\_\_\_\_ that could be used as collateral for the loan, and that Complainant provided tax returns to \_\_\_\_\_ for two years when he, in fact, did not file tax returns. In April 2012, Complainant pleaded guilty to the charges without a written plea agreement, and the Subject Judge later sentenced him to a total term of 102 months of imprisonment. After that, Complainant filed multiple pro se motions, which the Subject Judge ordered stricken because he was represented by counsel. This Court affirmed Complainant’s sentence on appeal.

In June 2014 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, raising three sets of challenges to his federal convictions: claims relating to the merits of his case (Ground One), claims of government misconduct

(Ground Two), and claims of ineffective assistance of counsel (Ground Three). He also filed a motion to recuse the Subject Judge and the presiding magistrate judge, arguing that they were biased and prejudiced against him. The Subject Judge denied the motion to recuse as to her, generally finding that the standards for recusal and disqualification were not met.

After various proceedings, on April 10, 2015, the Subject Judge entered an order finding that Grounds One and Two were procedurally defaulted because Complainant did not raise the claims on direct appeal, and that, in any event, they failed on the merits. The Subject Judge determined that Complainant was entitled to an evidentiary hearing as to Ground Three. In recounting the factual history of the case, the Subject Judge stated that in July 2008 Complainant began pursuing a short term business loan from \_\_\_\_\_ under the false pretense that he had over \$ \_\_\_\_\_ on deposit with \_\_\_\_\_ that could serve as collateral, and that according to Complainant, the purpose of the loan was to provide operating funds for his business, \_\_\_\_\_. The Subject Judge stated that to “further the ruse about the funds on deposit with \_\_\_\_\_,” Complainant provided \_\_\_\_\_ with a “fraudulent” letter dated July 22, 2008, purportedly from \_\_\_\_\_ and confirming a deposit in \_\_\_\_\_ account of over \$ \_\_\_\_\_. She stated that, in truth, the \_\_\_\_\_ account at \_\_\_\_\_ had been closed, and it never had a balance approaching \$ \_\_\_\_\_.

The Subject Judge’s order stated that \_\_\_\_\_ required Complainant’s personal tax returns, but that he had not filed tax returns for the requested years, and the returns he provided to the bank were fraudulent. The order stated, “When asked whether the bank would have provided a loan to an individual who had not filed taxes for the previous two tax years, \_\_\_\_\_ officials responded that the bank would not have done so.” It noted that \_\_\_\_\_ ultimately approved and funded an almost \$ \_\_\_\_\_ loan, which was never repaid. In a footnote, the order stated that Complainant claimed that a government witness, \_\_\_\_\_, bribed the bank to induce it to make the loan, in violation of 18 U.S.C. § 215. The Subject Judge found that the text of \_\_\_\_\_ e-mail cited by Complainant “makes clear that the money is a fee to the bank for providing a service, not a bribe: ‘The fee to the bank is \$ \_\_\_\_\_ for a 90 day loan.’” The Subject Judge determined that § 215(c) “does not apply to bona fide fees in the usual course of business. Regardless, this claim has no bearing on [Complainant’s] culpability for his own fraudulent conduct.”

At an evidentiary hearing in May 2015, the government called Complainant’s trial counsel, \_\_\_\_\_, to testify, and the following exchange took place:

[Counsel for the Government]: Did you consult with [Complainant] on whether or not to file an appeal in this matter?

[ ]: I received a request for a number of things to be appealed in writing. I did not personally speak with him about it.

[Counsel for the Government]: But you knew he wanted to appeal, and you filed a Notice of Appeal?

[ ]: He said he wanted to appeal right then.

\_\_\_\_\_ then described the categories of issues that Complainant wanted him to raise on appeal and noted that he ultimately filed an appeal raising what he believed to be the only meritorious issue. Later, \_\_\_\_\_ was asked, "Now, on the appeal, you never spoke with [Complainant] regarding the appeal, correct?" and he responded, "Correct." On August 17, 2015, Complainant, through counsel, filed a memorandum arguing that he had established that he received ineffective assistance of counsel in the criminal case. Later that month, Complainant filed a pro se motion in which generally took issue with the actions of his appointed counsel in the habeas proceedings and alleged that a fraud had been perpetrated on the court.

On September 1, 2015, the Subject Judge entered an order denying Complainant's § 2255 motion, generally finding that he had failed to meet his burden to show that his counsel had been ineffective. In that order, the Subject Judge set out the factual history of the case as she had in the April 10, 2015 order. In describing the evidence presented at the evidentiary hearing, the Subject Judge stated that after sentencing, \_\_\_\_\_ "consulted with [Complainant] about filing an appeal, including receiving written correspondence from [him] about what [he] believed should be appealed." The Subject Judge also denied Complainant's pro so motion, determining that his allegation that a fraud had been perpetrated on the court had no merit.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "knowingly and willingly engaged in conspiracy, conspiracy to deprive [him] of [his] rights, falsification of record, fraud, and knowingly entering false and fraudulent orders in furtherance of fraud." He asserts that the Subject Judge "is guilty of crimes to include but not limited to 18 U.S.C. §1001; 18 U.S.C. §241; 18 U.S.C. §242 as well as . . . concealing fraud committed by other government officials." Complainant alleges that in the April 10, 2015 order, the Subject Judge "is acting to conceal federal crimes of a government witness, acting to falsify the record for the sake of the government, and materially, providing false and fabricated statements in a Court Order in furtherance to scheme, fabricate, conspire and conceal."

Complainant specifically alleges that the Subject Judge “falsifie[d] the record” in her analysis of Complainant’s claim that a government witness, \_\_\_\_\_, bribed the bank to induce it to make a loan in violation of 18 U.S.C. § 215. Complainant states that the statute “makes clear that offering a fee in procurement of a loan is a prosecutable offense,” and that “[n]owhere in the email is \_\_\_\_\_ asking for ‘services’ as [the Subject Judge] falsely states.” Complainant alleges that this shows that the Subject Judge “was a willing participant in the scheme to cover up and falsify the record,” and that all of her orders and judgments “are void due to that fraud and falsification of record.” In support of that claim, Complainant attached an email from \_\_\_\_\_ that referred to “a copy of the \_\_\_\_\_ letter” and stated, “The fee to the bank is \_\_\_\_\_ for a 90 day loan.” Complainant also attached an excerpt of the sentencing guidelines on commercial bribery and kickbacks.

Complainant alleges that the Subject Judge made multiple false statements in the September 1, 2015 order. Specifically, he contends that the following statements were false: (1) that Complainant began pursuing a short term business loan from \_\_\_\_\_ under the false pretense that he had over \$ \_\_\_\_\_ that could serve as collateral, when the loan was pursued by \_\_\_\_\_ and there was no indication that Complainant, as an individual, had over \$ \_\_\_\_\_ that could serve as collateral; (2) that Complainant provided \_\_\_\_\_ with a July 2008 letter to further the ruse about funds on deposit with \_\_\_\_\_, when the e-mail from \_\_\_\_\_ shows that he, not Complainant, provided the letter; (3) that Complainant made fraudulent statements about his account balances in support of his attempt to obtain the loan, when he never made statements in his name “as an individual” and he was not obtaining a loan in his name; (4) that he had provided the bank with fraudulent tax returns, when those returns were not fraudulent; (5) that \_\_\_\_\_ officials stated that the bank would not have provided a loan to an individual who had not filed certain tax returns, when the government never spoke to a \_\_\_\_\_ official, as the bank no longer existed after April 2011; and (6) that after sentencing, \_\_\_\_\_ consulted with Complainant about filing an appeal, when \_\_\_\_\_ testimony at the May 2015 hearing showed that he “never communicated or consulted with” Complainant after sentencing.

Complainant alleges that the Subject Judge acted “to aid and assist a substantial conflict of interest between [Complainant] and the case agent” and “acted to conceal this conflict and refuse to investigate or inquire into it in any way.” He alleges that the Subject Judge acted in concert with others to conceal certain text messages. Complainant then alleges that the Subject Judge restricted and prohibited him from filing pro se motions and prevented him from raising the issue of fraud before the court. Finally, Complainant asserts that the Subject Judge is biased and prejudiced against him, and he states that “she was remarkably able to render a ruling on [his] § 2255 evidentiary hearing after just 10 days from the date appointed counsel filed the final memorandum,” yet took 3 months to render a decision after the evidentiary hearing of a codefendant.

Complainant requests that his Complaint of Judicial Misconduct or Disability be transferred to another circuit court.<sup>1</sup>

### Supplements

In his first supplemental statement, Complainant generally reiterates his allegations, and he states that the acts of fraud and falsification of court records are crimes and are not related to the merits of a decision or ruling. He also generally asserts that his claims are supported by the record. Complainant again requests to have the matter transferred to another circuit, submitting that he was prejudiced in connection with previous Complaints of Judicial Misconduct or Disability that he filed.

In his second supplemental statement, Complainant reiterates his allegations, asserts that his claims are supported by the record, and requests that the matter be transferred to another circuit. In addition, he contends that the Subject Judge “carbon-copied the government’s motion word for word in her order.” He also asserts that the Subject Judge concealed crimes by \_\_\_\_\_ and that she “either has a personal relationship or personal interest with \_\_\_\_\_ . . . .”

### Discussion

Rule 3(h)(3)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States 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 the Subject Judge’s official actions, findings, rulings, and orders entered in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, he

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<sup>1</sup> Complainant’s request to transfer this proceeding to a different circuit court is DENIED. See JCDR 7(a)(1); JCDR 26.

provides no credible facts or evidence in support of his allegations that the Subject Judge made false statements, falsified the record, was part of a conspiracy, committed fraud, violated criminal statutes, was biased or prejudiced against Complainant, had a conflict of interest, or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 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,” JCDR 11(c)(1)(D). 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**.

  
\_\_\_\_\_  
Chief Judge