



CONFIDENTIAL

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

Judicial Complaint No. 11-15-90156

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”).

Background

The record shows that in October 2008 a federal grand jury indicted Complainant on multiple counts of mail and wire fraud under 18 U.S.C. §§ 1341, 1343, and 1346. The case proceeded to a jury trial beginning on June 22, 2009. On June 24, 2009, _____ filed a Motion to Quash a subpoena that had been “issued but not served upon her.” In that motion, _____ stated that she planned to leave the city on June 26, 2009 “on a long planned trip with her son to visit her parents in _____,” and that she would not return until after the July 4 weekend. She stated, “Given the last minute nature of the subpoena and the questionable relevance of any testimony _____ might give, _____ believes that she should not be required to cancel her travel plans.” She attached a June 19, 2009 subpoena requesting, among other things, documents produced and statements made to government agencies pertaining to the case. The Subject Judge entered an order scheduling a hearing on the Motion to Quash for June 24, 2009.

The June 24, 2009 trial transcript shows that after the jury had been excused for the day, the Subject Judge addressed Motion to Quash filed by _____, stating that it was her understanding that the basis of the motion was that “_____ had plans to leave this Friday morning to visit her parents in _____ with her young son, and will not return until after the 4th of July weekend.” The Subject Judge then questioned the relevance of any evidence or testimony that might be provided by _____ and by another attorney who had been subpoenaed. Counsel for Complainant responded that he believed the two attorneys had informed an agent with the Internal Revenue Service that

Complainant may have been breaking the law, and that the defense was trying to determine what the attorneys told the agent.

_____ then addressed the court and stated that she had not provided any documents in connection with the meeting in question and that she previously had been retained to defend a company in a lawsuit Complainant had filed. Counsel for Complainant then stated that _____ “can take her trip” because the other attorney was the one who had provided documents and would be available to testify. The docket sheet shows that the Subject Judge entered an order finding _____ Motion to Quash moot by the agreement of counsel. A review of the trial transcripts shows that _____ did not testify against Complainant at trial.

At the end of the trial, the jury found Complainant guilty as charged. After that, Complainant filed a Motion for Bond, asking the court to set a bond for his release until sentencing and generally arguing that he was not a serious flight risk and was not a threat to the community. At a hearing in July 2009 the Subject Judge denied that motion, generally finding that Complainant had not met his burden to establish that he was not a flight risk or a danger to others.

At the sentence hearing in March 2010, the government sought an enhancement for obstruction of justice, calling _____ and others to testify in support of that enhancement. The Subject Judge determined that there was more than a preponderance of evidence to support it. The Subject Judge sentenced Complainant to a total term of 46 months of imprisonment, stating that the sentence would have been the same regardless of how the guidelines issues had been resolved. After imposing the sentence, the Subject Judge made the following statements: (1) “As a man of faith, I know that you share my belief that God is able to work good, even out of bad circumstances”; and (2) “We have many examples of Saints that have gone before us that have spent time in prison. Peter and Paul, among those. And we know what continuing impact St. Paul is having today from the difficult circumstances that he was in.”

After the judgment was entered, Complainant filed a notice of appeal and a “Motion for Bail Pending Appeal.” In April 2010 the Subject Judge denied the Motion for Bail, finding that Complainant did not establish that his appeal raised a substantial question of law or fact that would likely result in reversal of his conviction, a new trial, or significant modification of his sentence. In June 2011 this Court affirmed Complainant’s convictions and sentence, holding among other things that the district court did not clearly err in applying an obstruction of justice enhancement.

In October 2012 Complainant submitted a letter seeking the recusal of the Subject Judge, generally arguing that she was prejudiced against him. In an attached affidavit, Complainant alleged, among other things, that the Subject Judge had made comments at trial indicating that she had a “strong social relationship” with a witness, _____, and

that those comments had been omitted from the trial transcript. He also stated that he previously had instigated a lawsuit and was represented by a member of the Subject Judge's husband's law firm. Complainant noted that he had attempted to persuade another individual to testify in favor of the partner when the partner was being sentenced for election tampering. Complainant stated that if he had known at the time of trial that the Subject Judge's husband was a member of the same law firm, he would have sought the Subject Judge's recusal in the case.

The Subject Judge entered an order treating Complainant's letter as a motion to recuse and denied it, finding that he had failed to show any actual or perceived bias. The Subject Judge noted that the only extrajudicial source of any alleged bias related to a partner in the Subject Judge's husband's law firm. The Subject Judge stated that she previously had no knowledge of Complainant's relationship with her husband's law partner, and that, in any event, Complainant had not shown how such a positive relationship could be evidence of actual or perceived bias to his detriment.

In late October 2012 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, raising claims of ineffective assistance of counsel and prosecutorial misconduct. In November 2012 a letter was filed notifying the court of a change of address. In the letter, Complainant noted that an order had been mailed to him at his previous address at _____, and he provided an address on _____ in _____. In December 2012 the Subject Judge entered an order deeming the case ripe for summary disposition and informing Complainant of his right to file documents to show why the court should not summarily deny or dismiss the § 2255 motion. Complainant twice requested extensions of time to respond, which the Subject Judge granted, and he filed responses in February and April 2013.

In September 2014 the Subject Judge denied Complainant's § 2255 motion, finding that: (1) the ineffective assistance of counsel claim failed because counsel's performance was not deficient and Complainant was not prejudiced; and (2) the claims of prosecutorial misconduct were procedurally defaulted and without merit. The docket sheet shows that an envelope sending the order and opinion to Complainant was returned undelivered in October 2014. In March 2015 Complainant sent a letter to the Subject Judge in which he stated that the September 2014 order was initially mailed to an incorrect address in _____, which he characterized as an "inexplicable" error because he had kept the court informed of his address. In light of the delay in receiving the order, he requested an extension of time to appeal the order and sought a certificate of appealability (COA). Complainant attached an April 2014 letter to the court in which he requested that the court change his address from the _____ address in _____ to an address on _____ in _____. The letter listed only the number of his criminal case.

In April 2015 the Subject Judge construed Complainant's letter as a motion for reconsideration of the order denying his § 2255 motion and a motion for a COA, and denied the motions. With respect to the motion to reconsider, the Subject Judge first found that it was untimely under Fed. R. Civ. P. 59(e), and that although Complainant informed the clerk of his new address for his criminal case, he failed to update his address in the § 2255 case. The Subject Judge then found the motion was timely under Fed. R. Civ. P. 60(b), but that he failed to establish that he was entitled to relief. Finally, the Subject Judge denied the motion for a COA because Complainant had not made a substantial showing of the denial of a constitutional right.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant first states that the Subject Judge engaged in conduct that undermined public confidence in the integrity and impartiality of the judiciary, created a "strong appearance of impropriety," and violated Canon 2 of the Code of Conduct for United States Judges. He asserts that the Subject Judge "displayed extreme prejudice in the handling" of his criminal trial and "has continued to display that prejudice in subsequent civil actions arising from this case and others conspiring to deny [him] civil and due process rights guaranteed by the Constitution."

Complainant alleges that the Subject Judge "failed to disclose a deep personal relationship with a witness" in the case, which "affected her conduct throughout the trial and the final disposition and sentencing in the case." Complainant states that _____, who was an attorney with the law firm _____, which had represented Complainant for 17 years, testified against Complainant at trial during week of June 22, 2009. Complainant asserts that immediately after _____ testimony, the Subject Judge "moved to dismiss her, saying amid lengthy banter between them, 'I know you are anxious to see your significant other so I am going to let you go. Please give him my love.'" Complainant contends that the comments clearly indicated "prior knowledge of _____ personal life and plans to travel to _____ to visit her 'significant other' which was not disclosed during any comments by _____."

Complainant states that according to FBI records he obtained, _____ was a "key player in instigating my investigation and prosecution and supplied information" from files held by the law firm and her husband. He asserts that the conversation between the Subject Judge and _____, which was "conducted in open court prior to adjournment," "had been removed" from the official transcript of the trial. Complainant states that "[i]n light of subsequent actions by this court," he "avers" that this was done "at the direction of [the Subject Judge] or her senior clerk." Complainant then states that he:

brought to the attention of the court the issue of an improper relationship between this clerk and _____, an attorney representing defendant who bragged about his influence with “_____” and ability to obtain special favors from her. When he was dismissed for incompetence arising from his well-known substance addiction, that favor was used against me. This issue was never investigated or addressed by the court and may have had consequences for the conduct of the trial.

Complainant asserts that the Subject Judge “has displayed a pattern of non-disclosure of conflicts in other high profile cases she has handled.” Complainant states that in December 2014, “while discussing the treatment [the Subject Judge] had given _____ . . . in his criminal trial, he allowed as to how he was very pleased with the treatment he had received which helped with his acquittal on all criminal counts.” Complainant states, “He then disclosed that his daughter and [the Subject Judge] had shared horse stable space and were friends.” Complainant states that to his knowledge, the Subject Judge never disclosed this fact “which may have had a bearing on her ruling in this case and other related cases.” Complainant then states that in the case of _____, the Subject Judge sentenced him to six months of imprisonment, and that this Court “directed her to re-sentence _____ after she initially gave him five years’ probation.” Complainant states that this Court “is familiar with this issue, but perhaps not with her motives in providing an obviously outrageously lenient sentence.”

Complainant contends that the Subject Judge failed to disclose before and during trial that her husband, _____, was a member of the law firm _____, which had previously represented Complainant in a separate lawsuit. Complainant “argues that there should not have been any nexus between the court and the defendant that might impinge of the court’s impartiality in defendant’s case.” He states that he has learned that a “business relationship has existed between the U.S. Attorney’s office in _____ and the law firm of _____, who were hired to perform work for the courts.” Complainant states that the Subject Judge’s “friend _____ is a member of that firm,” and he “avers that this law firm has had and continues to have preferential treatment by the court as demonstrated in my trial.”

Complainant alleges that in “direct defiance of Supreme Court rulings forbidding the display of partisan religious symbols within courtrooms and courthouses, [the Subject Judge] has continued to adopt as a routine part of her attire, a brightly colored Kentia cloth stole which contains Christian religious symbols and messages.” He states that the Subject Judge “has been very forthcoming in expressing her deep religious faith in the courtroom; lecturing on how the ‘innocent St. Paul spent time in prison but was able to do much good from there.’” Complainant asserts that the “stole implies that those wearing them are somehow acting as an agent of God and are imbued with some special grace, wisdom, or favor. Thus, her actions in the courtroom are less likely to be challenged or questioned by members of a jury who likely share her Christian faith.”

Complainant asserts that the Subject Judge's wearing of the stole was "clearly prejudicial against those who do not believe as they do," and that "this symbol of her faith helped to influence the jury" in his case.

Complainant states that the "most glaring example of [the Subject Judge's] extreme prejudice against" Complainant was her "unwarranted enhancement" of his sentence "after holding him in jail without bail for nine months," and he generally takes issue with her finding that he was a "flight risk unworthy of bail." He states that, at the sentence hearing, the Subject Judge "summarily added an additional year to my sentence without a hearing on the facts . . . ignoring ruling by the Supreme Court on this issue." Complainant alleges that the Subject Judge attempted to justify the enhancement as within the sentencing guidelines, and that she "did this to protect the career and reputation of _____, a witness who committed perjury and has subsequently been elected as a local judge" in _____. Complainant then alleges that the Subject Judge intentionally delayed ruling on his § 2255 motion "for as long as possible," and "intentionally caused her decision to be mailed to an obviously incorrect address in order to prevent [C]omplainant from filing a timely appeal of her decision." Finally, Complainant contends that the "court totally ignored" improper behavior by the government. He attached a couple of documents to his Complaint.

Discussion

Canon 2 of the Code of Conduct for United States Judges (Code of Conduct) provides, "A judge should avoid impropriety and the appearance of impropriety in all activities." Guide to Judiciary Policy (Guide), Vol. 2A, Ch. 2, Canon 2. Canon 3C(1) provides in part that a judge shall disqualify herself in a proceeding in which her "impartiality might reasonably be questioned." Guide, Vol. 2A, Ch. 2, Canon 3C(1). The enumerated examples include when:

the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

- (i) a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) acting as a lawyer in the proceeding;
- (iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
- (iv) to the judge's knowledge likely to be a material witness in the proceeding.

Guide, Vol. 2A, Ch. 2, Canon 3C(1)(d). The Commentary to Canon 3C(1)(d)(ii) provides in part, “The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge.” Guide, Vol. 2A, Ch. 2, Commentary to Canon 3.

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 Complainant’s cases, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge was biased or prejudiced against him, was part of a conspiracy, had a conflict of interest or an improper relationship with anyone involved in the cases, failed to disclose a conflict of interest, altered the trial transcripts or directed that they be altered, gave preferential treatment to certain individuals or a certain law firm, improperly displayed religious symbols, intentionally delayed ruling on Complainant’s § 2255 motion, intentionally caused court documents to be mailed to an incorrect address, or otherwise engaged in misconduct.

With respect to Complainant’s allegations that: (1) after _____ testified, the Subject Judge “moved to dismiss her” and stated, “I know you are anxious to see your significant other so I am going to let you go. Please give him my love”; (2) the conversation “had been removed” from the transcript; and (3) the comment showed that the Subject Judge had “prior knowledge of _____ personal life and plans to travel to _____ to visit her ‘significant other’ which was not disclosed during any comments by _____,” the record shows that _____ revealed in her Motion to Quash that she was traveling to _____ to visit her parents, she only addressed the court outside the presence of the jury in the context of the Motion to Quash, and counsel for Complainant agreed that _____ “can take her trip.” There is no evidence suggesting that there was

an unauthorized alteration of the transcript or that the Subject Judge had an improper relationship with a witness in the case.

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**.

A handwritten signature in black ink, appearing to read 'E. J. ...', written over a horizontal line.

Chief Judge