

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APR 06 2016
Amy C. Nerenberg
Acting Clerk of Court

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90003

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 1999 a federal grand jury issued an indictment charging Complainant, _____, and another individual with drug and firearm-related offenses. In July 1999 _____ filed a motion to suppress statements and evidence, arguing that the government had violated his Fourth Amendment rights by unlawfully arresting him without probable cause in connection with a search of his residence pursuant to a search warrant. After an evidentiary hearing on July 27, 1999, the Subject Judge entered an order denying his motion to suppress, finding that: (1) his detention was reasonable because he was on the premises where the warrant was being served; and (2) the officers’ movement of him to a different location was *de minimis*. After that, _____ pleaded guilty to one of the counts in the indictment. In October 1999 the Subject Judge sentenced him to 51 months imprisonment.

With respect to Complainant, in November 2000 a federal grand jury issued a superseding indictment charging him with two drug-related offenses and one firearm-related offense. The case proceeded to trial in January 2001. The jury found Complainant guilty on two counts, and the third count was dismissed on the government’s motion. In April 2001 the Subject Judge sentenced Complainant to a total term of life imprisonment. This Court affirmed his convictions and sentences on direct appeal. Complainant raised various post-conviction challenges to certain 1999 search warrants, and those challenges were unsuccessful.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that at the suppression hearing on July 27, 1999, the Subject Judge “conspired with the prosecutor to deny the suppression hearing,” using an Application and Affidavit for Search Warrant that was “not genuine” and had not been authenticated in accordance with Fed. R. Evid. 901(a). Complainant states that at his trial, the Subject Judge allowed his appointed counsel to “improperly authenticate the document before the jury.” Complainant states, “Instead of requesting the production of the search warrant, he calls the affiant to the stand, and through a series of questions and statements, verifies from the affiant that [a certain defense exhibit] was the application that was used to procure the search warrant.”

Complainant appears to take issue with certain search warrants and related documents, and he contends that a certain search warrant shows “the Fourth Amendment violation” because it was issued after the search had taken place. He alleges that the Subject Judge’s actions violated the “first three Canons of the Code of Conduct for United States District Judges,” and that “such an error impugns the integrity of due process and undermines the judge[’]s honor, integrity and probity regarding judicial matters.” Finally, Complainant states that his allegation “attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness—‘the merits’—of the ruling itself.” He attached various documents to his Complaint.

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, and orders entered in the criminal 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 that Complainant challenges, he provides no credible facts or evidence in support of his allegations that the Subject Judge conspired with a prosecutor, violated the Code of Conduct for United States Judges, 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**.

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

Chief Judge