

OCT 14 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90062 through 11-16-90065

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. District Judges _____ and _____ and U.S. Magistrate 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 District Judges _____ and _____ and United States Magistrate 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 _____ retired in _____.

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

Background

The record shows that in June 2006 a federal grand jury indicted Complainant, along with multiple codefendants, on conspiracy, armed bank robbery, and firearms charges. The docket sheet shows that arrest warrants were issued for the defendants, and Complainant was arrested on June 20, 2006. Complainant appeared before Judge _____ and pleaded not guilty to the charges. In September 2006, at a change of plea hearing before Judge _____, Complainant pleaded guilty to certain counts pursuant to a written plea agreement. After that, the case was reassigned to Judge _____ as the presiding district judge. In September 2007 Judge _____ sentenced Complainant to a total term of 260 months of imprisonment.

Over four years later, in November 2011 Complainant filed a motion in which he argued that he was eligible for resentencing. In December 2012 he filed a Notice of Appeal in which he generally challenged his sentences. In June 2013 Judge _____

entered an order denying Complainant's November 2011 motion, construed as a Motion to Reduce Sentence.

In July 2013 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in which he raised claims of ineffective assistance of counsel. The next month, Judge _____ issued a report recommending that Complainant's § 2255 motion be dismissed without prejudice as premature because his direct appeal was pending before this Court. Over Complainant's objections, in October 2013 Judge _____ adopted the report and recommendation and dismissed the § 2255 motion without prejudice as premature. In April 2014 this Court dismissed Complainant's appeal for lack of jurisdiction, determining that his notice of appeal was untimely.

In December 2014 Complainant filed another § 2255 motion arguing, among other things, that the district court had failed to advise him of his right to appeal and that he had received ineffective assistance of counsel. In January 2015 Judge _____ issued a report recommending that the § 2255 motion be dismissed as untimely. Over Complainant's objections, in March 2015 Judge _____ adopted the report and recommendation and dismissed the § 2255 motion. This Court clerically dismissed Complainant's appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends that Judge _____ did not have jurisdiction to arraign him because there were no arrest warrants in the case and that he was arraigned on a writ of habeas corpus ad Prosequendum, which was not permitted under the rules of criminal procedure. Complainant states that his change of plea hearing before Judge _____ "was held without jurisdiction as no arrest warrants exist." He contends that Judge _____ sentenced him "without arrest warrants," failed to advise him of his right to appeal, refused to allow him to fire his retained counsel or to appoint new counsel, did not respond to his request for an allocution hearing, and sentenced him "to an entirely incorrect sentencing guideline."

Complainant takes issue with Judge _____ recommendation that Complainant's § 2255 motion be dismissed as untimely, noting that he previously found that Complainant's earlier § 2255 motion was premature. Complainant alleges that in March 2015 Judge _____ adopted the report and recommendation in violation of Complainant's due process rights. Complainant states that he was denied the opportunity to file a § 2255 motion presenting newly discovered evidence and to seek relief based on case law made retroactive to cases on collateral review. He alleges that Judge _____ "ruled on every decision appealing from his decision," despite a canon of ethics on disqualification providing that he should have disqualified himself because his

impartiality may be questioned. Finally, Complainant states that each of the Subject Judges “rendered decisions and I do not have any federal arrest warrants.”

Supplement

In his supplemental statement, Complainant reiterates his allegations and states that Judge _____ “never established jurisdiction, or the existence of probable cause” in connection with Complainant’s arraignment. Complainant asserts that the “arrest warrants noted in the docket are ficti[t]ious, and do not exist,” and that the indictment was not returned in open court, was not signed by the United States Attorney, and bore no “true bill indication.” Finally, Complainant alleges that “[s]everal actors conspired to violate [his] due process rights,” and he states that he has “been conspired against to the extent of falsification, and ficti[t]ious entries on the docket.”

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 a 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” provides 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 _____ retirement, “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 _____.

Judges _____, _____, and _____

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 Judges _____, _____, and _____ official actions, findings, reports, and orders entered in the cases, including Judge _____ failure to recuse, 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 Judges _____, _____, and _____ were part of a conspiracy or otherwise engaged in misconduct.

With respect to Judges _____, _____, and _____, 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 Judges _____, _____, and _____.



Chief Judge