

OCT 14 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90074

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 July 2012 a federal grand jury indicted Complainant on four counts stemming from her involvement in a bankruptcy case, including one count of falsification of records (Count Three). In October 2012 Complainant pleaded guilty to Count Three pursuant to a written plea agreement. At a sentence hearing in January 2013, the Subject Judge stated that after reviewing “the information that [_____] has provided, including the emails that [Complainant] sent apparently to her lawyer and to the bankruptcy court. I have a question in my mind whether she is entitled to acceptance of responsibility in this case.” Complainant’s counsel responded that he believed Complainant received “some terrible legal advice and that is what led us to this case today.” The Subject Judge ultimately continued the hearing to allow counsel to obtain a letter from an attorney concerning the advice he had given Complainant.

At the sentence hearing in February 2013, the government presented two witnesses who testified on the issue of Complainant’s acceptance of responsibility. The Subject Judge then determined that Complainant had not accepted responsibility, in light of, among other things, an email that she had authored. The Subject Judge then indicated that _____ had submitted a letter in his personal capacity, and noted that he was representing the victim in the case. The Subject Judge stated, “I receive letters all the time from relatives and friends of people that I’m about to sentence, giving their personal opinions. And I think that the law does not prohibit even a lawyer representing a victim

to give his personal opinion.” She stated, “So I will hear whatever _____ – I’ve heard from him in that letter as to what his personal opinion is, but I think the victim has a right to be represented and to allow him to speak.” _____ then addressed the court on behalf of a company. After that, the Subject Judge sentenced Complainant to 5 months of imprisonment and imposed restitution in an amount over \$50,000.

In February 2014 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct her sentence, raising claims of ineffective assistance of counsel. In June 2015 a magistrate judge issued a report recommending that the § 2255 motion be denied, generally finding that Complainant failed to establish that she was entitled to relief. After that, the Subject Judge entered an order recusing herself from the case.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge engaged in “willful misconduct,” failed to perform her duties, brought the judiciary into disrepute, and committed crimes. Complainant also asserts that the Subject Judge “ignored evidence, twisted rules and procedure, obstructed the record, and ignored other facts, allowed infirm claims and dismissed valid claims, overlooked evidence supportive to [Complainant], denied Constitutional rights, suborned perjury, and misapplied the law.”

Complainant alleges that in December 2012 _____ sent the Subject Judge a “personal letter” with exhibits that included emails from Complainant and her husband that _____ “illegally and dishonestly obtained.” Complainant alleges that the Subject Judge reviewed the documents “in violation of 18 U.S.C. § 2515” and “used the attorney’s information and illegally obtained emails to show that [Complainant] did not fully accept responsibility.” Complainant contends that the letter was never filed and “should be considered ex parte communications.” She also asserts that the Subject Judge “had already made up her mind as to [Complainant’s] sentence,” and that the February 2013 sentence hearing “was a hoax and deception of the judicial process depriving [Complainant] of her due process rights.”

Complainant takes issue with the Subject Judge’s actions at the sentence hearings, contending that she should have done various things differently at the hearings. Complainant asserts that the Subject Judge “took no actions to learn” if Complainant had seen the sentencing report. She asserts that the Subject Judge “knew or should have known the prosecutor did not confirm or verify if [Complainant] had committed a crime and whether she had intended to commit a crime,” and that the Subject Judge should have found that she did not commit a crime. She also alleges that the Subject Judge allowed an attorney “to rudely interrupt the sentencing hearing during testimony of witnesses many times,” and she complains that the Subject Judge allowed an attorney to speak as a “victim.” Complainant then takes issue with the judgment and the restitution amount.

Finally, Complainant alleges that the Subject Judge: (1) rejected her oath to uphold the United States Constitution which “evidences either a lack of faithfulness to a principle of law that is beyond dispute or an utter lack of competence”; (2) violated Complainant’s constitutional rights; (3) “should not have engaged in treason to the Constitution”; (4) has “no respect for,” and “did not comply with,” “the law or the Constitution”; (5) “does not maintain professional competence in the law”; (6) “does not install public confidence” in the judiciary; (7) “is dishonest, unfair, incorrect, not honorable, and does not avoid impropriety”; (8) “is not patient or dignified”; (9) allows lawyers in her courtroom to be “rude and ill-mannered”; (10) did not take appropriate disciplinary measures against a lawyer for unprofessional conduct; and (11) willfully violated the Code of Conduct for United States Judges. Complainant attached various documents to her Complaint, including a December 2012 letter from _____ to the Subject Judge in which he stated that he was the person “who discovered the fraud which is the basis of the criminal charges,” and that Complainant “has shown no repentance or remorse over her bankruptcy fraud.”

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, she provides no credible facts or evidence in support of her claims that the Subject Judge 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