

OCT 14 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90076

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 issued a superseding indictment charging Complainant with multiple fraud-related offenses. The indictment set out in part that Complainant conspired with another individual to obtain a loan from _____ by falsely claiming that Complainant had a certain amount of money in _____ that could be used as collateral. 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. 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 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, in April 2015 the Subject Judge entered an order finding that Grounds One and Two were procedurally defaulted because Complainant did not raise them 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 loan from _____ under the false pretense that he had a certain amount of money on deposit with _____ that could serve as collateral. She stated that to “further the ruse about the funds on deposit with _____,” Complainant provided _____ with a “fraudulent” letter purportedly from _____ confirming a deposit in an account of over \$21 million. She noted that _____ ultimately approved and funded a loan, which was never repaid.

In a footnote, the Subject Judge’s 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 _____ email 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 \$1 million 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.”

After an evidentiary hearing, in August 2015 Complainant filed a pro se motion generally taking issue with the actions of his appointed counsel and alleging that a fraud had been perpetrated on the court. The next month, the Subject Judge entered an order denying Complainant’s § 2255 motion, generally finding that he failed to meet his burden to show that his counsel had been ineffective. In the order, the Subject Judge set out the factual history of the case as she had in her April 2015 order. The Subject Judge also denied Complainant’s pro se motion, determining that his allegation that a fraud had been perpetrated on the court had no merit. After that, Complainant filed multiple motions seeking various types of relief, which the Subject Judge denied.

Earlier Complaint

In an earlier Complaint of Judicial Misconduct or Disability, Complainant alleged in part that the Subject Judge made false statements, falsified the record, and acted to conceal the crimes of a government witness. Complainant specifically alleged that the Subject Judge falsified the record in her analysis of his claim that _____ bribed the bank to induce it to make a loan in violation of 18 U.S.C. § 215. He stated, “[n]owhere in the email is _____ asking for ‘services’ as [the Subject Judge] falsely states.” Complainant also alleged that the Subject Judge falsely stated that Complainant provided _____ with a letter to further the ruse about funds on deposit with _____, when the email from _____ shows that he, not Complainant, provided the letter.

Because that Complaint was merits-related and based on allegations lacking sufficient evidence to raise an inference of misconduct, it was dismissed. Complainant did not file a petition for review, and that Complaint matter is closed.

Current Complaint

In his current Complaint of Judicial Misconduct or Disability, Complainant raises two “issues of fact which” he asserts the Subject Judge “has lied about.” First, Complainant alleges that the Subject Judge “has continued to falsify the record in her Orders” and has lied by stating that Complainant provided _____ with a letter from _____. He contends that an email from _____ shows that _____ was the one who emailed the letter to the bank. Complainant alleges that the Subject Judge lied when she stated that _____ email makes clear that certain money was a fee to the bank for providing a service, not a bribe, and that 18 U.S.C. § 215 does not apply to bona fide fees in the usual course of business. He contends that the Subject Judge lied “to protect and assist” _____ and “to protect the lies and fraud” of an Assistant United States Attorney, and he asserts that the Subject Judge is “concealing the federal crimes” of _____. Complainant notes that he raised this issue in his previous Complaint of Judicial Misconduct or Disability, and he generally takes issue with the dismissal of that Complaint.

Complainant states, “Either my duty is to present the findings that [the Subject Judge] is a liar and a fraud, or my duty is to present that she has made it legal to offer a fee in procurement of a loan” He also states, “And my duty to do such a presentation will create such media/press and viral interest that one way or the other, the public will be informed.” In conclusion, Complainant alleges that the Subject Judge “continues to commit fraud and lies simply to deny my due process and conceal and protect federal crimes.” Complainant attached an email from _____ in which _____ referenced “a copy of the _____ letter” and stated, “The fee to the bank is \$1 million for a 90 day loan.” Complainant also attached an excerpt of the sentencing guidelines on commercial bribery and kickbacks.

Supplements

In Complainant’s first supplemental statement, he reiterates his allegations and asks that the “collateral [e]ffect” of the Subject Judge’s actions be considered. Complainant also states the Subject Judge’s “lie” that _____ was seeking “services” shows that she is incapable of being an “impartial fact finder” and is “willing to enter fraud into the record, rendering her delusionally disabled from proceeding in this, or practically any other case.” In the second supplemental statement, Complainant generally reiterates his allegations.

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.

Furthermore, when a complaint repeats allegations of a previously dismissed complaint, it is appropriate to dismiss those allegations and address only any allegations that have not previously been considered. See JCDR 11(c)(2).

Complainant’s claims concerning the Subject Judge’s alleged false statements, falsification of the record, and concealment of crimes have already been considered in connection with his earlier Complaint of Judicial Misconduct or Disability. To the extent Complainant raises allegations that have not previously been considered, he provides no credible facts or evidence in support of his allegations that the Subject Judge suffered from a disability or 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