

FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT

111690101

IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY

ON PETITION FOR REVIEW*

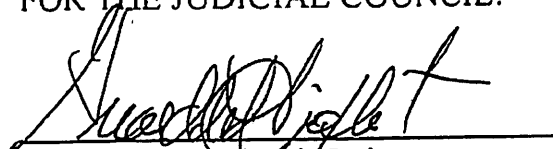
Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, STEELE, WATKINS, and WOOD, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Wood, the order of Chief Judge Ed Carnes filed on 10 January 2017, and of the petition for review filed by the complainant on 17 January 2017, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby AFFIRMED.

The foregoing actions are APPROVED.

FOR THE JUDICIAL COUNCIL:



United States Circuit Judge

* Chief Circuit Judge Ed Carnes and Chief District Judge Rodgers did not take part in the review of this petition.

JAN 10 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90101

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 five supplemental statements. The filing of the supplemental statements is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in April 2014 a federal grand jury indicted Complainant on charges of mail fraud, filing false claims, theft of government property, and aggravated identity theft. Complainant filed two motions to dismiss the indictment, raising various challenges to the indictment, and the Subject Judge denied those motions. The case then proceeded to trial, and in November 2014 a jury found Complainant guilty as charged. In January 2015 the Subject Judge sentenced him to a total term of 331 months of imprisonment. Complainant appealed, and in March 2016 this Court affirmed his convictions and sentences.

Meanwhile, in September 2015 Complainant filed in the district court a document labeled “Complaint” and “Motion to Invoke Power of the Court” in which he requested that the court use its contempt power to punish government officials who caused him to be unlawfully incarcerated. In October 2015 he filed a “Supplemental Complaint” in which he alleged that an agent had falsified the warrant for Complainant’s arrest and that his counsel and a government agent had conspired to conceal his arguments concerning his unlawful detention. In March 2016 the Subject Judge denied the initial and supplemental complaints, finding that: (1) Complainant filed the documents when the

court was divested of jurisdiction due to his appeal; (2) he provided no grounds for reconsideration of the court's prior orders; (3) his arguments concerning ineffective assistance of appellate counsel were properly raised in a motion brought pursuant to 28 U.S.C. § 2255; and (4) this Court rejected the arguments he raised.

The record shows that in July 2016 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, arguing in part that the district court lacked jurisdiction in his criminal case because government agents falsified the warrant that led to his arrest. He also filed a motion to recuse the Subject Judge, arguing that he should recuse because he had shown prejudice against Complainant in the criminal case and Complainant had filed a Complaint of Judicial Misconduct or Disability against him. Later in July 2016, the Subject Judge denied the motion to recuse, generally finding that Complainant did not establish a basis for recusal. In August 2016 Complainant filed a "Motion for Judicial Notice and Adjoining Motion for Emergency Release" in which he argued that the indictment had been falsified. The next day, the Subject Judge denied the motion, determining that the court lacked jurisdiction to grant the relief requested and that Complainant's contention that the indictment was falsified was "wholly without merit." After that, Complainant filed a motion for preliminary injunction, which the Subject Judge denied in December 2016.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge is conspiring with a prosecutor and two government agents to conceal that the agents falsified the arrest warrant which led to his wrongful convictions and false imprisonment. Complainant also alleges that the Subject Judge acted "intentionally and with malice" in refusing to acknowledge or rule upon his October 2015 supplemental complaint. Complainant alleges that Subject Judge denied the motion to recuse "out of spite and annoyance," and is acting to cover up the falsification of the arrest warrant and indictment. He generally alleges that the Subject Judge has refused to rule on Complainant's filings out of "spite[,] prejudice and racial animus" and to deny him access to the courts. Finally, Complainant takes issue with the Subject Judge's denial of the Motion for Judicial Notice, contending that he acted with an improper motive in failing to address the issue of the allegedly falsified indictment. He attached various documents to his Complaint.

Supplements

In his first supplemental statement, Complainant raises allegations of misconduct against a prosecutor and reiterates his allegation that the Subject Judge was part of a conspiracy and acted with an illicit and improper motive. In the second supplemental statement, Complainant asserts that: (1) he was tried on a falsified indictment that was not sealed, even though the court ordered that it be sealed; (2) the arrest warrant was

signed by an individual who was not authorized to sign and issue the warrant; and (3) the arrest warrant was not filed on the court's docket "as required by law." He states that he advised the Subject Judge that the arrest warrant was "bogus and falsified," but the Subject Judge "allows said matter to fall on deaf ears." Complainant attached documents to his second supplement. He his third and fourth supplemental statements are letters requesting that attached documents to be considered along with his Complaint.

In his fifth supplemental statement, Complainant asserts that the Subject Judge "unlawfully ruled" on Complainant's motion to recuse, and he takes issue with the Subject Judge's denial of his motion for preliminary injunction. Complainant alleges that the Subject Judge harbors "extreme prejudice and racial animus malice." He asserts that the Subject Judge knows that the name signed on the arrest warrant is falsified and fraudulent. Complainant requests that the Subject Judge be recused from considering the § 2255 motion.¹ He also attached documents to that supplement.

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 cases, 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 was part of a conspiracy, acted with an illicit or improper motive, or otherwise engaged in misconduct.

¹ Complainant's request to have the Subject Judge recused is DENIED.

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. L. Kramer", written over a horizontal line.

Chief Judge