

FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL

APR 26 2017

CIRCUIT EXECUTIVE

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111690123

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

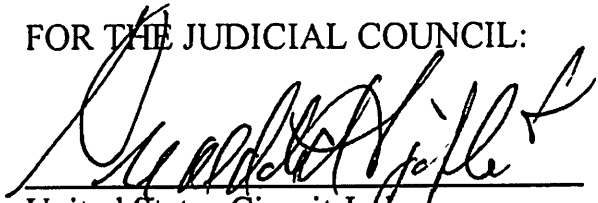
ON PETITION FOR REVIEW*

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

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Merryday and Land, the order of Chief Judge Ed Carnes filed on 1 February 2017, and of the petition for review filed by the complainant on 27 February 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.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 01 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90123

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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in 2006 Complainant pleaded guilty to drug and firearm-related charges, and he was sentenced to a total term of 180 months of imprisonment. In 2014, after various proceedings, the case was reassigned to the Subject Judge as the presiding district judge. After that, Complainant filed multiple motions seeking various types of relief. In August 2016 the government filed a motion to withdraw an Assistant United States Attorney (AUSA) from the case, stating that he had entered an appearance for asset forfeiture issues only and those issues had been resolved. The Subject Judge granted the motion to withdraw. Complainant appealed, and this Court dismissed the appeal for lack of standing.

Complainant then filed, among other things, a motion to withdraw his plea agreement in light of the AUSA’s withdrawal and because the AUSA “departed from the terms of the agreement asset forfeiture” In October 2016 the Subject Judge entered an order denying or dismissing various motions Complainant had filed, including the motion to withdraw his plea agreement. The order also imposed an “anti-filing injunction” on Complainant in light of his “exceptional litigiousness.” Specifically, Complainant was: (1) enjoined from relitigating claims arising from the same set of

factual circumstances as all of his prior motions, and (2) required to seek leave of court before filing any future motions or appeals.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the Subject Judge's October 2016 order imposing an injunction against him, stating that she "created her own personal anti-filing injunction to refrain [Complainant] from performing on any adequate remedy at law." Complainant asserts that the injunction "was a personal retaliation tool from" the Subject Judge and that it "must be null and void." Complainant also appears to take issue with the Subject Judge's order granting the AUSA's motion to withdraw. He alleges that the Subject Judge and the AUSA made misrepresentations and acted to conceal and cover up misconduct pertaining to Complainant's plea agreement and criminal forfeiture, and he states that they "must be estopped from removing information" He attached various documents to his Complaint.

Supplement

In his supplemental statement, Complainant moves for an order requiring the Subject Judge "to submit to a competency evaluation" due to her "apparent mental condition."¹

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.

¹ Complainant's motion is DENIED.

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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge retaliated against him, made misrepresentations, acted to conceal or cover up misconduct, suffers from a "mental condition," 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**.



Chief Judge