

APR 11 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-16-90132

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 December 2013 a federal grand jury issued a superseding indictment charging Complainant and a codefendant each with one count of conspiracy to commit bank and wire fraud and multiple counts of bank fraud. Following a trial, the jury found Complainant guilty as charged in the superseding indictment and found the other defendant guilty on all counts except for one count of bank fraud. In August 2014 the Subject Judge sentenced Complainant to a total term of 360 months of imprisonment and later issued an amended judgment modifying the restitution order. Both defendants appealed, and in March 2016 this Court affirmed the defendants’ convictions and affirmed Complainant’s sentences.

Meanwhile, in December 2014 Complainant filed in the district court multiple pro se motions seeking various types of relief, including a motion for a new trial or a judgment of acquittal, and the government moved to strike those filings because Complainant was represented by counsel. The Subject Judge entered an order granting the motion to strike and, in the alternative, denying Complainant’s motions as meritless.

In June 2016 Complainant filed a motion for a new trial based on newly discovered evidence, arguing that a new trial was warranted in light of, among other things, prosecutorial misconduct, withholding of Brady¹ evidence, perjury of multiple

¹ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

witnesses, and false statements by two jurors. In October 2016 the Subject Judge denied the motion for a new trial, finding that the allegedly newly discovered evidence, even if true, did not have a reasonable probability of producing a different result in at trial. Complainant filed a motion for reconsideration, which the Subject Judge denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “knowingly and intentionally acted in a conflict of interest in which his impartiality might reasonably be questioned.” He contends that the Subject Judge “obstructed, delayed, and/or prevented” him and his codefendant “from obtaining a fair and impartial trial under the Sixth Amendment . . .” Complainant alleges that the Subject Judge was aware of prosecutorial misconduct that occurred in the case, which caused him to operate under a conflict of interest. He asserts that the Subject Judge “must recuse and/or disqualify himself” from all proceedings relating to Complainant’s criminal case.

Complainant then generally alleges that the Subject Judge entered multiple orders that were “contrary to law,” favored the prosecution, allowed the prosecution to “defraud the court,” exhibited bias and prejudice against Complainant, and violated his Constitutional rights. He specifically takes issue with the Subject Judge’s December 2014 order granting the government’s motion to strike, complaining that the Subject Judge did not give him time to respond to the motion. He states that the Subject Judge “did not just err with his ruling, but he showed a complete bias and prejudice against” the defendants by striking the motions.

Complainant alleges that the Subject Judge “attempted to evade” Complainant’s claim that a juror committed perjury by disregarding facts and questioning the accuracy and authenticity of documents. Complainant states that the Subject Judge “clearly subverted the Constitution” and turned “his head to the injustice that was committed,” which was a result of his “apparent bias and conflict of interest.” Complainant alleges that the Subject Judge “knowingly and intentionally allowed the prosecution to defraud the court through perjured testimony” of a witness and intentionally helped the prosecution conceal Brady material. Finally, Complainant states that the Subject Judge engaged in “several criminal acts against” him by entering orders that were contrary to law, and “acted outside the scope of his authority by engaging in several illegal acts.” Complainant requests a jury trial.

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 that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge had a conflict of interest, was not impartial, was biased or prejudiced against Complainant or his codefendant, favored the prosecution, engaged in criminal acts, 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