

FILED  
ELEVENTH CIRCUIT  
JUDICIAL COUNCIL  
  
AUG 30 2017  
  
CIRCUIT EXECUTIVE

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

**111690133**

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

\_\_\_\_\_  
**ON PETITION FOR REVIEW\***  
\_\_\_\_\_


Before: TJOFLAT, HULL, MARCUS, WILSON, MARTIN, 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, Martin, Land, and DuBose, the order of  
Chief Judge Ed Carnes filed on 11 April 2017, and of the petition for review filed  
by the complainant on 20 April 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, Circuit Judge William Pryor, Circuit Judge  
Adalberto Jordán, and Chief District Judge M. Casey Rodgers did not take  
part in the review of this petition.

**CONFIDENTIAL**

APR 11 2017

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

David J. Smith  
Clerk

**Judicial Complaint No. 11-16-90133**

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

**Background**

The record shows that in 1994 a federal grand jury indicted Complainant, along with multiple codefendants, on four drug-related counts and one count of illegal use of a communication facility. In 1997, following a trial, the jury found Complainant guilty as charged, and the Subject Judge later sentenced him to a total term of 360 months of imprisonment. This Court affirmed on appeal.

In 2000 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, claiming, among other things, that his trial counsel was ineffective for failing to raise on direct appeal that government witnesses committed perjury and that the government committed a Brady<sup>1</sup> violation by delaying or failing to disclose a “Cooperating Individual Agreement” that was used against him at trial. Complainant also argued that his due process rights had been violated because he was convicted for actions he took under the belief that he was acting as a confidential informant. In February 2001 he filed a motion for the court to take judicial notice of the Department of

---

<sup>1</sup> Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

Justice's "Guidelines Regarding the Use of Confidential Informants," which a magistrate judge granted.

In May 2001 the magistrate judge issued a report recommending that Complainant's § 2255 motion be denied, finding in part that: (1) his claims of perjury were unsupported; (2) there was no Brady violation because the cooperation agreement was not exculpatory; and (3) he was procedurally barred from raising the claim that he was acting as a confidential informant because that claim was rejected on appeal. Over Complainant's objections, the Subject Judge denied the § 2255 motion for the reasons stated in the magistrate judge's report. Complainant filed a motion for reconsideration, which the Subject Judge denied. He also filed a notice of appeal and a motion for a certificate of appealability (COA). In August 2001 the Subject Judge denied the motion for a COA, finding Complainant failed to meet the standard for a COA. This Court later denied the motion for a COA because Complainant failed to make a substantial showing of the denial of a constitutional right.

In June 2002 Complainant filed a motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6), arguing that he was wrongfully convicted as a result of the government presenting a fabricated "Cooperating Individual Agreement" and false testimony, which constituted a fraud upon the court. In October 2002 the Subject Judge denied the motion for relief from judgment, finding Complainant raised no new arguments warranting review of the denial of his § 2255 motion. He also filed a motion for reconsideration, which the Subject Judge denied. Complainant filed a notice of appeal, which the Subject Judge construed as a motion for a COA and denied. In March 2003 this Court denied Complainant's motion for a COA because he failed to make the requisite showing.

After additional proceedings, in July 2004 Complainant filed a motion for relief from judgment pursuant to Rule 60(b)(3), again arguing that he was wrongfully convicted as a result of the government presenting a fabricated cooperation agreement and false testimony, which constituted a fraud upon the court. The Subject Judge denied the motion, finding that Complainant could not challenge an order in a criminal case using the Federal Rules of Civil Procedure. Complainant filed a motion for reconsideration in which he argued that binding precedent allowed challenges to the denial of habeas relief to be brought pursuant to Rule 60(b)(3) in order to remedy a fraud upon the court.

In August 2004 the Subject Judge granted the motion for reconsideration and vacated his prior order, stating that according to recent case law, Complainant was "entitled to a judicial determination regarding the merits of his Rule 60(b)(3) motion." The Subject Judge also referred the Rule 60(b)(3) motion to a magistrate judge for further action. After that, the magistrate judge ordered that Complainant's motion for reconsideration and the order granting that motion be opened as a new § 2255 motion to vacate.

In the new case, the magistrate judge issued a report recommending that the § 2255 motion to vacate, or in the alternative, for relief pursuant to Rule 60(b) be denied, finding that Complainant did not seek relief under Rule 60(b) on permissible grounds and that his motion was the functional equivalent of an unauthorized successive motion to vacate. In April 2005 the Subject Judge, for the reasons stated in the magistrate judge's report, dismissed the case due to Complainant's failure to obtain this Court's authorization under 28 U.S.C. § 2244(b)(3). Complainant filed a motion for reconsideration, which the Subject Judge denied.

In April 2005, in Complainant's initial habeas action, the Subject Judge denied the Rule 60(b)(3) motion as moot because it had been converted into a new case and dismissed as frivolous. Complainant then filed multiple unsuccessful motions for relief in that case. In October 2016 he filed a letter in which he requested that his case be considered for the court's "Volunteer Attorney Program," and the letter was docketed as a motion for referral to the program. On the same day, the Subject Judge denied the motion.

Meanwhile, in January 2016 in Complainant's criminal case, he filed through an attorney a motion for appointment of counsel to represent him in connection with a forthcoming application to file a successive § 2255 motion, generally arguing there were "legitimate and concerning issues that surround [his] upcoming motion." The next day, the Subject Judge denied the motion "in the exercise of [the court's] discretion."

After that, Complainant filed a motion to reopen his original § 2255 proceedings pursuant to Rule 60(b)(6) and (d)(1), which was docketed on April 4, 2016. In the motion, he generally alleged that a fraud had been committed on the court in connection with the "Cooperating Individual Agreement." On April 5, 2016, the Subject Judge denied the motion. On April 28, 2016, Complainant filed a notice of appeal and a motion for a COA. The next day, the Subject Judge denied the motion for a COA, and this Court later denied the motion for a COA because he failed to make the requisite showing. The record also shows that Complainant has filed with this Court multiple applications for leave to file second or successive motions to vacate, which have been denied.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge "permitted [him] to be wrongfully convicted," and that, since then, he and "certain Judges" of this Court "have deliberately covered up this miscarriage of justice." Complainant alleges that he was wrongfully convicted based on a fabricated document and false testimony presented by the government, and that the government has continued to present "falsehoods" which have resulted in his inability to obtain relief. He also

complains that the Subject Judge sentenced him to a term of imprisonment that was more than seven times greater than the term specified in the plea offer.

Complainant states that the Subject Judge's "reputation as ' \_\_\_\_\_ ' and his pro-government stance is an open secret within [this Court] and precedes him." Complainant states: "However, his secret personal animus against me is not obvious to the world at large but is quietly hidden within his terse orders and buried in the court's archives - away from public view or inspection." He then states that the Subject Judge "was visibly angered that [Complainant], a foreign national, had the audacity to challenge his beloved federal government by going to trial and, ever since then, he has held a personal animus against" Complainant. He contends that after his conviction, the Subject Judge "has religiously denied each and every substantive motion that I have submitted to him over the ensuing nineteen years, with rote, single-word, single-sentence -- or even 'paper-less' orders."

Complainant then takes issue with various orders the Subject Judge issued in the habeas case and with various orders entered by this Court. Complainant states that the Subject Judge "summarily denied" his § 2255 motion without "making a written evaluation" of the "meritorious claims" and without holding an evidentiary hearing. He complains that the Subject Judge "summarily denied" his 2004 Rule 60(b)(3) motion "based on outdated law." Complainant states that after the Subject Judge "reluctantly" granted a motion for reconsideration, he "exercised his macabre penchant for intellectual dishonesty and again summarily denied" the motion without discussion, in spite of his own order stating that Complainant was entitled to a judicial determination regarding the merits of the motion. He also complains that the Subject Judge denied the: (1) January 2016 motion to appoint counsel the day after it was filed; (2) March 2016 motion to reopen within two days of it being docketed; and (3) April 2016 request for a COA within one day of it being docketed.

Complainant then takes issue with the Subject Judge's "prompt[]" denial of his request to be considered for placement in a Volunteer Attorney Program. Complainant asserts that the Subject Judge's "personal animus against [him] becomes most evident in this very order" because even though he had never filed or been accused of filing frivolous pleadings, the Subject Judge "undeservedly" designated him as a "restricted filer," which constituted "[p]roof positive of his animus." Finally, Complainant contends that he is actually and legally innocent of the crimes of which he was found guilty, and he requests that the Subject Judge be removed from Complainant's case and that a different judge be assigned. He attached various documents to his Complaint.

### Supplements

In Complainant's first supplemental statement, he takes issue with the Subject Judge's rulings pertaining to the cooperation agreement. Complainant states that the

Subject Judge allowed prosecutors to “fully expose” the document in open court and to “use it extensively against” Complainant to his “extreme prejudice.” He also states that the Subject Judge was “intellectually dishonest” when he struck the document from the record because the jury had already been exposed to it. Complainant asserts that this action was “consistent with his reputation as being pro-government, intellectually dishonest and his stated desire to impose ‘a million years of imprisonment before he leaves the bench.’” Complainant also states that the Subject Judge issued a “series of intellectually dishonest rulings . . . designed to ensure [Complainant’s] wrongful conviction and continued imprisonment.”

Complainant states that he has “encountered scores of other fellow inmates who have shared their horror stories with [Complainant] about their experiences with [the Subject Judge], aka ‘\_\_\_\_\_.’” He cites a decision of this Court reversing a decision by the Subject Judge and remanding to a different judge. He states, “Clearly, [the Subject Judge] is incorrigible in his partiality towards the government.” He also states that the Subject Judge engaged in “judicial tyranny” and “should be impeached” due to his “horrendous reputation.” He attached documents to his first supplement.

In his second supplemental statement, Complainant alleges that the Subject Judge made “intellectually dishonest decisions,” committed crimes against him, caused him and his family to experience pain and suffering, exhibited “pro-government partiality,” and engaged in a “reign of tyranny.” He also attached documents to his second supplement, including letters in which he demands that the Subject Judge be impeached.

In his third supplemental statement, Complainant states that the Subject Judge has demonstrated that he is “unfit” to preside in the case, and he requests a “prophylactic order” directing the district court clerk to reassign his case to another judge.

In his fourth supplemental statement, Complainant contends that the Subject Judge acted with in illicit or improper motive and “effectively covered up this egregious miscarriage of justice” for over 19 years by denying all of Complainant’s requests for relief. Complainant states that the Subject Judge’s rulings have caused him and others to experience a substantial and widespread lowering of confidence in the federal courts. Complainant again requests an order directing that his case be reassigned to a different judge.

## 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 Complainant's 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 acted to cover up a miscarriage of justice, was not impartial, was biased against Complainant or in favor of the government, committed crimes, acted with an illicit or improper motive, 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