

APR 17 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90085

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 July 2013 a federal grand jury issued a second
superseding indictment charging Complainant with multiple offenses. Following a trial,
a jury found Complainant guilty as charged in the second superseding indictment, and in
May 2014 he was sentenced to a total term of 108 months of imprisonment. After that,
Complainant appealed and filed multiple motions, including a motion to dismiss the
indictment and a motion for transfer to a different facility. In July 2014 the case was
reassigned to the Subject Judge as the presiding district judge. The Subject Judge entered
orders denying the motion to dismiss because “counsel [was] representing defendant on
appeal” and the motion for a transfer because of lack of jurisdiction.

Complainant filed multiple motions seeking various types of relief, which the
Subject Judge denied. Complainant filed notices of appeal and moved for leave to appeal
in forma pauperis (IFP), and in September 2015 the Subject Judge denied the motions to
proceed IFP because the appeal was frivolous. After that, the Subject Judge granted
Complainant’s motion for authorization to pay for transcripts. In December 2015
Complainant filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2).
The government filed a response, and the Subject Judge issued an order denying the
motion because the amendment to the United States Sentencing Guidelines was not
retroactive. After that, Complainant filed various motions, which the Subject Judge
denied.

In April 2016 this Court issued an opinion affirming Complainant's convictions and sentences, and the mandate issued in September 2016. Complainant then filed in the district court multiple motions seeking various types of relief, which the Subject Judge denied, including some on grounds of mootness. In January 2017 Complainant filed a motion for the return of property, which the Subject Judge denied with leave to refile after Complainant completed his sentence. In July 2017 Complainant filed, among other things, a motion to recuse the Subject Judge, contending that the Subject Judge had denied numerous motions without providing "any explanation under the law," which showed that he had obstructed justice and was biased against Complainant.

The record also shows that in January 2017 Complainant filed a "Motion to Vacate and Set Aside Conviction to Request a New Trial Pursuant to Fed. R. Crim[.] P. 33(b)(1) and for a Relief from Judgment Pursuant to Fed. R. Civ. P. 60(d)(3)," which was docketed as a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. A few days later, the Subject Judge denied the motion, stating that the court had repeatedly ruled on Complainant's post-conviction motions. Complainant then filed, among other things, a motion to correct the recharacterization of his motion as a § 2255 motion to vacate, and the Subject Judge denied the motion, again stating that the court had repeatedly ruled on Complainant's post-conviction motions.

The record shows that in August 2017 Complainant filed in a different district court a lawsuit against the Subject Judge, alleging, among other things, that he violated Complainant's due process rights, obstructed justice, and exhibited bias against Complainant in the criminal case. A magistrate judge issued a report recommending that the complaint be dismissed as barred by 28 U.S.C. § 1915(g) and the doctrine of judicial immunity. In October 2017 a district judge adopted the report and recommendation and dismissed the complaint. Complainant appealed, and in February 2018 this Court clerically dismissed the appeal for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "abused his authority, denied [Complainant] due process and has a conflict of interest." Complainant states that he filed numerous motions in his criminal case in an effort to attack his conviction and correct errors, but that "every single motion filed for [the Subject Judge's] review was denied without stating a reason, did not identify materially disputed facts and gave no hint of conclusions of law." Complainant states that this violated his Constitutional rights and caused him "serious injury." He states that the Subject Judge's failure to provide explanations for his orders "is not a judicial matter normally performed by a judge" and "falls outside the subject matters of jurisdiction."

Complainant also complains that the Subject Judge construed his motion filed under Fed. R. Crim. P. 33 as a § 2255 motion to vacate, and he contends that the Subject Judge denied the motion “without properly reviewing” the motion and evidence, without requesting the government to respond, and without “any explanation under the law.” Complainant states that the Subject Judge then denied additional motions “without explanation or due process” and “failed to correctly follow and demonstrated recalcitrance in following the laws.”

Complainant states that the Subject Judge “has clearly showed that he failed to adequately state reasons for those denials when such is required by law and which consequently caused serious injury to [Complainant], delay in other proceedings and motions in which he has attempted to prove his innocence and correct serious errors.” He states that other motions have been pending with the district court for more than six months. He asserts that “[n]o single motion” he filed was “given due process” by the Subject Judge, and that he “abused his discretion by not applying the correct legal standard or law in a proper manner.” Complainant states the Subject Judge exhibited a “pattern and practice of not providing reasons when require[d] to do so.”

Complainant also notes that he filed a lawsuit against the Subject Judge, and he contends that a “conflict of interest is established as a result” and that “recusal of the Judge is mandatory.” Finally, he requests that this Court remove the Subject Judge from his case due to a conflict of interest, and reverse the Subject Judge’s orders denying his motions and “allow proper review and ruling to take place under the law.” He attached documents to his Complaint.

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. Complainant's remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge improperly failed to give reasons for his decisions or otherwise engaged in misconduct. See In re Memorandum of Decision of Judicial Conference Comm. on Judicial Conduct and Disability, 517 F.3d 558, 562 (U.S. Jud. Conf. 2008) (holding that a Complaint of Judicial Misconduct or Disability based on allegations that a judge had a pattern or practice of failing to give reasons for a decision when required to do so by prevailing law or the direction of a court of appeals in particular cases "must identify clear and convincing evidence of willfulness, that is, clear and convincing evidence of a judge's arbitrary and intentional departure from prevailing law based on his or her disagreement with, or willful indifference to, that law.").

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