

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 20 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90008 through 11-18-90010

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judge _____
and U.S. District Judges _____ and _____ of 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
Magistrate Judge _____ and United States District Judges _____ and _____
(collectively, “the Subject Judges”), 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 September 2010 a federal grand jury indicted
Complainant, along with a codefendant, on three drug and firearm-related charges,
including a charge of possession of cocaine base with intent to distribute (Count Two).
At the arraignment before Judge _____, Complainant pleaded not guilty to the
charges. In December 2010 Judge _____ entered an order that, among other things,
granted a motion to sever and stated that the cases against the two defendants would be
tried separately. In January 2011 the government filed a motion to dismiss the case
against Complainant pursuant to Fed. R. Crim. P. 48(a), and Judge _____ entered an
order dismissing the indictment without prejudice.

The record also shows that in June 2015 Complainant and another individual filed
a lawsuit against the Subject Judges and others in which they, among other things, took
issue with the Subject Judges’ rulings and orders pertaining to the Fair Sentencing Act of
2010 in certain cases. The defendants filed motions to dismiss the complaint. In
November 2016 a magistrate judge who is not one of the Subject Judges recommended
that the case be dismissed as time-barred, as well as because the federal defendants were
absolutely immune from suit, and because a Bivens action could not be sustained against
the other defendants. Over the plaintiffs’ objections, in January 2017 a district judge who
is not one of the Subject Judges entered an order adopting the magistrate judge’s

recommendation, and the case was dismissed. The district court's judgment was affirmed on appeal.

Complaint

In her Complaint of Judicial Misconduct or Disability, Complainant states that she was indicted on Count Two after the Fair Sentencing Act of 2010 was enacted, and she alleges that: (1) Judge _____ held a detention hearing on Count Two "that he knew was not a valid statute"; (2) Judge _____ "proceeded to trial" knowing he was "in violation of a statute that was not clearly valid for prosecution"; and (3) Judge _____ dismissed the indictment after knowing that Count Two "was not a valid statute for a prosecution."

Complainant alleges that the Subject Judges: (1) conspired with the federal government "to discriminate against" the Fair Sentencing Act, in violation of the Equal Protection Clause; (2) acted with bias and impropriety; (3) conspired with the "United States Attorney Administration Office and The Federal Probation Staff" to violate the Fair Sentencing Act; (4) "made non-judicial decisions" in Complainant's case; (5) "did not consider the legal[] and factual standards and rulings," such that they "must have had another improper motive" for ruling against her; and (6) "conspired with the Federal Government knowingly the [sic] Fair Sentenc[ing] Act of 2010 was in violation and in the Face of clearly valid statutes or caselaw expressly depriving them of jurisdiction, subjected them to Recklessly and Judicial Misconduct as Article III Judges."

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 Judges' official actions, findings, and orders entered in her case, the allegations are

directly related to the merits of the Subject Judges' decisions or procedural rulings. Apart from the decisions or procedural rulings with which Complainant takes issue, she provides no credible facts or evidence in support of her allegations that the Subject Judges were part of a conspiracy, 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