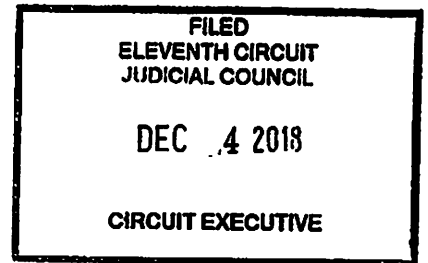


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

111890044



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

ON PETITION FOR REVIEW*

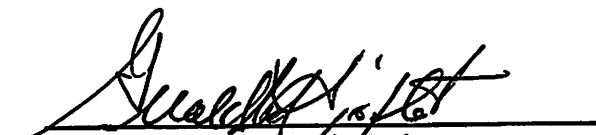
Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, WATKINS, DuBOSE, HALL, and WALKER, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes filed on 14 September 2018, and of the petition for review filed by the complainant on 12 October 2018, 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 did not take part in the review of this petition.

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

SEP 14 2018

David J. Smith
Clerk

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

Judicial Complaint No. 11-18-90044

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 May 2014 a federal grand jury indicted Complainant on one count of conspiracy to commit wire fraud affecting a financial institution. A magistrate judge appointed counsel to represent Complainant, and Assistant Federal Public Defender _____ entered an appearance on his behalf. At a status conference in September 2014, a discussion was held about when the trial would be scheduled, and the Subject Judge stated, “Well, maybe _____, you can get your client to plead and then all our problems will be solved.” In late September 2014 a superseding indictment was issued, adding multiple counts of wire fraud affecting a financial institution.

In October 2014 the government filed an amended motion for a protective order prohibiting the unauthorized disclosure of discovery material to non-litigants. In the motion, the government stated that Complainant apparently had hired two other attorneys to work on his case. On the same day, _____ filed a motion to withdraw from the case, contending that she and Complainant had irreconcilable differences. The magistrate judge then issued an order granting in part the government’s motion for a protective order, directing that, pending a hearing on the motion, the parties were not to disclose discovery materials to unauthorized recipients.

At a hearing in October 2014, Complainant noted that he had been in contact with counsel other than _____, and that _____ had prevented him from speaking with his other attorney. The Subject Judge stated that the other attorney did not have a right to consult with Complainant or advise _____ in the case, as he was not counsel of record. The Subject Judge then stated, “You are welcome to talk to other counsel and

enter a notice in this case. But they can't act as shadow lawyers" The Subject Judge later reiterated that Complainant could not have a lawyer "who's essentially a shadow lawyer, who's trying to be the lawyer in this case when he is not the lawyer in this case, and he is not even a member of this Bar."

The Subject Judge then stated, "You've got to have an attorney that you have some confidence in, and you've got to have an attorney that can represent you in this case." The Subject Judge continued, "if I appoint another attorney to represent you in this case, then you may not be entirely satisfied with that attorney, but I'm not going to keep appointing attorneys. Otherwise, this case is never going to get tried." The Subject Judge later granted _____ motion to withdraw, stated that new counsel would be appointed, and determined that the ends of justice required a continuance of the trial that outweighed the interests of the defendant and the public in a speedy trial.

After that, the magistrate judge appointed a new attorney to represent Complainant, and the Subject Judge granted the government's second motion for a protective order. In December 2014 Complainant filed a pro se "Motion to Consult and or Instruct Any Attorney of His Choosing," which the Subject Judge denied without prejudice because Complainant was represented by an attorney.

The case proceeded to trial, and in January 2015 a jury found Complainant guilty as charged in the superseding indictment. After that, Complainant filed four pro se motions seeking various types of relief. The Subject Judge entered an order denying three of the motions without prejudice because Complainant was represented by an attorney. The order stated that at the sentence hearing the court would hear the fourth motion, which sought to replace counsel of record. The order reminded Complainant of the court's "previous admonition that it will not appoint a third counsel."

At the sentence hearing, the Subject Judge addressed Complainant's motion to replace counsel, informed Complainant that he had the opportunity to represent himself, and asked if he wished to represent himself at sentencing. Complainant responded that he was "not ready for that" and that had been under the impression that he was not permitted to represent himself. The Subject Judge denied the motion to replace counsel. The Subject Judge denied the motion to replace counsel. Complainant was sentenced to a total term of 135 months of imprisonment. The court ordered restitution to the victims and ordered forfeiture in the amount of \$ _____. Complainant appealed.

In February 2017 this Court affirmed Complainant's convictions, custodial sentence, and restitution, but vacated the forfeiture order and remanded for further proceedings. This Court held, among other things, that the district court: (1) did not violate Complainant's constitutional rights by ordering him not to contact attorneys who did not intend to be counsel of record; and (2) did not violate his right to self-representation.

After that, the Subject Judge held a forfeiture hearing and issued an amended forfeiture judgment. Complainant then filed a motion to proceed pro se and for reconsideration of the forfeiture order. The Subject Judge granted the motion to the extent Complainant could proceed pro se but denied it to the extent he sought reconsideration of the forfeiture order. Complainant filed two notices of appeal.

In November 2017 Complainant filed a motion for a new trial, contending that “many acts of prosecutorial misconduct, including much false testimony and the lack of submission of many relevant and key documents” constituted newly discovered evidence warranting relief. A couple of months later, the Subject Judge denied the motion, finding that it was not based on newly discovered evidence and that it was untimely and meritless. Complainant filed notices of appeal as to multiple orders, and he filed two additional motions. In February 2018 the Subject Judge ordered the motions stricken, finding that the court lacked jurisdiction to rule on them in light of the pending appeal.

After that, Complainant filed a motion to recuse the Subject Judge, arguing that she had violated his constitutional rights, was biased against him, was not impartial, and refused to investigate perjury and fraud. The Subject Judge issued an order denying the motion to recuse, generally finding that Complainant had not established a basis for recusal. 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’s rulings violated his rights to: (1) free speech, (2) free association; (3) a “second (unpaid/volunteer) legal opinion”; (4) participate in his own defense; (5) proceed pro se; and (6) a speedy trial. He also alleges that the Subject Judge: (1) stated that he “must have an attorney” in the case; (2) “interfered in the plea deal process”; (3) sentenced him “based upon [his] exercising [his] due process rights”; and (4) “ignored blatant fraud and misdirection by numerous officers of the Court including prosecutors.” He states that the Subject Judge “seemed initially perturbed” by his refusal to waive his speedy trial rights, was “extremely vocal about the u[n]paid support” he received from other attorneys, and put “tremendous pressure” on _____ “to deliver a pre-agreed plea that the Court would accept.”

Complainant asserts that his second attorney told him that “the Judge is very angry with you,” stated that the trial outcome had already been decided, and asked him “Why couldn’t you just be afraid like everyone else?” He claims that at the forfeiture hearing, the Subject Judge “ignored the representation of the false evidence” as to a lender’s status. He takes issue with the Subject Judge’s rulings that a certain motion was not supported by newly discovered evidence and that the court did not have jurisdiction over another motion due to a pending appeal. Finally, Complainant states:

Although not on the record, I realized the full extent of the Court’s contempt for me when at sentencing [the Subject Judge] mocked me by

wobbling her head side to side when I quoted Federal Rules and my right to examine the second PSI for more than 24 hours, a matter that was also ignored.

He attached various 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, rulings, findings, and orders in the case, 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 acted with an illicit or improper motive, was biased against Complainant, treated him in a demonstrably egregious and hostile manner, 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