

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 02 2020

David J. Smith
Clerk

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

Judicial Complaint No. 11-19-90110

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate Judge _____ of the United States 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 _____ (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 August 2017 a federal grand jury issued an indictment charging Complainant and multiple codefendants with various offenses. In December 2017 _____ was appointed to represent Complainant, and the next month, Complainant pleaded not guilty to the charges against him. A few months later, he filed a counseled motion to suppress wiretap evidence, generally alleging that the evidence was obtained in violation of his constitutional rights.

In December 2018 Complainant filed a pro se motion to appoint new counsel, generally taking issue with the representation provided by _____. The next month, following a hearing, the Subject Judge entered an order denying the motion, finding that there was not adequate cause to appoint substitute counsel in the case. After additional proceedings, in May 2019 the Subject Judge issued a report recommending denial of the motion to suppress, finding that the evidence obtained was admissible under the “good-faith exception” to the warrant requirement and, in any event, the wiretap authorizations satisfied statutory and constitutional requirements.

Over Complainant’s objections, the district judge entered an order adopting the report and recommendation and denying the motion to suppress. Complainant then filed another motion for appointment of counsel, arguing that _____ performance was deficient, unlawful, and unethical, and complaining, among other things, that _____

had not filed any motions concerning violations of the Speedy Trial Act. In June 2019, after a hearing, the Subject Judge entered an order denying the motion, generally finding that there was not good cause to replace _____.

Complainant proceeded to trial and was represented by _____. In August 2019 a jury found Complainant guilty as charged in the indictment. Complainant then filed, among other things, a motion for release from custody and a motion to proceed pro se, and the district judge denied those motions because Complainant was represented by counsel. In November 2019 Complainant filed additional motions to proceed pro se.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant takes issue with the representation provided by _____, and he complains that the Subject Judge denied his motions for appointment of a different attorney. Complainant asserts that the Subject Judge's order denying the first motion "forced [his] hand" in going to trial with an attorney providing "poor representation." He states the Subject Judge denied his second motion "with no respect of the poor," and the court did not send him notice of the "unethical outcome." In conclusion, Complainant alleges that the Subject Judge: (1) engaged in unethical actions; (2) prejudiced Complainant by allowing him to receive ineffective assistance of counsel; (3) "helped violate" the Speedy Trial Act; and (4) violated his oath of office.

Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, "Allegations Related to the Merits of a Decision or Procedural Ruling," provides in part that "[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." The "Commentary on Rule 4" states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling 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 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 violated his oath of office 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**.

A handwritten signature in black ink, appearing to read "Edgar", is written over a horizontal line.

Chief Judge