

DEC 21 2016

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-16-90072 and 11-16-90073

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. District Judge _____ and
U.S. Magistrate Judge _____ 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
District Judge _____ and United States Magistrate Judge _____ (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”).

As an initial matter, after Complainant filed his Complaint, he filed a supplemental
statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR
6.7.

Background

The record shows that in June 2012 a federal grand jury indicted Complainant on
one count of attempted enticement of a minor to engage in sexual activity and one count
of transferring obscene matter to a minor. After various proceedings, in September 2013
Complainant, who was represented by counsel, pleaded guilty to the charges. The next
month, Complainant filed a pro se motion to withdraw his plea and requested that he be
appointed new counsel, and Judge _____ appointed new counsel to represent him. In
December 2013, after a hearing, Judge _____ denied Complainant’s motion to
withdraw his plea, finding “no legitimate grounds” to set the plea aside. Complainant
then filed multiple motions seeking various types of relief, which the Subject Judges
denied.

In April 2014 Judge _____ sentenced Complainant to a total term of 120
months of imprisonment. Complainant filed a notice of appeal. After that, Complainant
filed multiple motions seeking various types of relief, and Judge _____ ordered that
the motions be stricken because the court did not have jurisdiction while Complainant’s

appeal was pending. In January 2015 this Court affirmed Complainant's convictions and sentences, noting that an independent review of the record revealed no arguable issue of merit on appeal. Complainant then filed in the criminal case additional motions seeking various types of relief, including a motion seeking coram nobis relief, and Judge _____ denied the motions. Complainant filed a notice of appeal, and in October 2015 this Court: (1) denied Complainant's motion for a certificate of appealability, construed from his notice of appeal; and (2) affirmed the district court's order denying him coram nobis relief.

The record shows that in November 2015 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in which he raised various challenges to his convictions, and he argued, among other things, that his attorney coerced him into pleading guilty. Complainant then filed multiple motions seeking various types of relief, including a motion to disqualify Judge _____ from the case, alleging in part that she had expressed personal bias against him. Judge _____ entered orders ruling on various motions, including an order denying the motion to disqualify and an order deeming the case ripe for summary disposition. In April 2016 Complainant filed a motion in opposition to the court's order regarding summary disposition in which he alleged that the court had concealed a murder, and he filed other motions seeking various types of relief.

The record also shows that Complainant has filed with this Court three petitions for writ of mandamus relating to his cases, all of which this Court clerically dismissed for want of prosecution.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant "accuses" the Subject Judges: (1) "of being accessories after the FACT in [an individual's] murder for assisting in concealing facts concerning the same"; (2) of obstruction of justice "by refusing to allow any investigation" into the individual's murder; and (3) of misprision of felony for failing to report the murder to the United States Attorney's Office. Complainant then asserts that he "became privy" to a murder confession and that he reported the confession to the Subject Judges and others.

Complainant also states that an individual threatened to kill Complainant's wife and children, and that his attorney compelled him to plead guilty to a crime he did not commit in order to secure protection for his family. He then asserts that the attorney and another individual convinced a judge to reduce the sentence of the person who confessed to the murder. Complainant states that he "raised this issue" with Judge _____ "on many occasions," but that she either denied or ignored his filings. He also complains that Judge _____ has refused to allow discovery on the circumstances of the murder and its effects on his case. He attached various documents to his Complaint.

Supplement

In his supplement statement, Complainant generally alleges that the Subject Judges caused him to be incarcerated in an effort to obstruct justice. He attached documents to his supplement.

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 the cases, 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, he provides no credible facts or evidence in support of his claims that the Subject Judges concealed a crime, obstructed justice, engaged in misprision of felony, 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