



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

111790011

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

ON PETITION FOR REVIEW*

Before: TJOFLAT, HULL, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDAN, ROSENBAUM, and JULIE CARNES, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, RODGERS, WATKINS, DuBOSE, and HALL, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, Pryor, Land, and Rodgers, the order of Chief Judge Ed Carnes filed on 18 August 2017, and of the petition for review filed by the complainant on 31 August 2017, 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.

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OF THE ELEVENTH CIRCUIT

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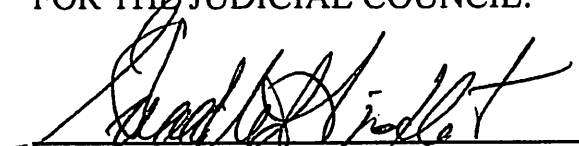
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United States Circuit Judge

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FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 18 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-17-90011 and 11-17-90012

IN THE MATTER OF A COMPLAINT FILED BY _____

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

Background

The record shows that in May 2015 Judge _____ signed a criminal complaint submitted by a government agent who alleged that Complainant violated 18 U.S.C. §§ 554(a) and 922(e) concerning illegal shipments of firearms and ammunition. Attached to the criminal complaint was the agent’s affidavit setting out the facts supporting his belief that probable cause existed to arrest Complainant. After various proceedings, in September 2015 a federal grand jury issued a superseding indictment charging Complainant with one count each of: (1) causing the delivery of firearms and ammunition to a common carrier for shipment in foreign commerce without notice to the carrier; and (2) knowingly and fraudulently attempting to export firearms and ammunition from the United States.

During a trial, the government presented a witness as an expert in the registration of firearms in Haiti. During *voir dire*, the witness stated, “Some of the Haitian police aren’t the most honest and will accept money.” The jury ultimately found Complainant guilty as charged in the superseding indictment. In September 2016 Complainant filed a *pro se* motion to, among other things, vacate the judgment of conviction, generally arguing that his constitutional rights had been violated. Complainant also filed a *pro se* motion to disqualify Judge _____, alleging that he had a conflict of interest and was biased against Complainant because he had issued orders in other lawsuits Complainant had filed. Judge _____ entered an order striking the *pro se* motions because

Complainant was represented by counsel. In October 2016 Judge _____ sentenced Complainant to a total term of 60 months of imprisonment.

The record also shows that in June 2016 Complainant filed a lawsuit against multiple defendants, raising allegations pertaining to his criminal case. In August 2016 Judge _____ entered an order adopting a magistrate judge's report and recommendation and dismissing the complaint for failure to state a claim on which relief could be granted.

The record shows that Complainant filed another lawsuit in June 2016, generally alleging that his counsel in the criminal case provided him with ineffective assistance. In August 2016 Judge _____ entered an order adopting a magistrate judge's report and recommendation and dismissing the complaint for failure to state a claim.

The record shows that in November 2016 Complainant filed 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence raising various challenges to his convictions. In December 2016 Judge _____ adopted a magistrate judge's report and recommendation and dismissed the case for lack of jurisdiction and without prejudice as to any issue not cognizable on appeal. In a separate judgment, Judge _____ denied Complainant a certificate of appealability (COA).

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judge _____ issued an "arrest warrant/criminal complaint without reading its contents and verifying the facts" set out by the agent, and he takes issue with various statements made in the supporting affidavit. Complainant alleges that Judge _____ "overlook[ed] and ignor[ed]" violations of his constitutional rights in the case. He asserts that Judge _____ "protect[ed]" the prosecutor and allowed the prosecutor "to use his courtroom as a stage to introduce fabricated evidence" and discriminatory testimony, including a statement that "all Haitians are not the most honest of people."

Complainant states that Judge _____ "shield[ed] the government from answering to any actions which [Complainant] [has] taken," "used his position to hide the truth," and "allowed his emotions to take precedent over the issues." He alleges that Judge _____ was biased against him as a person of Haitian descent, and that Judge _____ showed bias by denying his motions and denying him a COA when he had not asked for one. Finally, Complainant generally alleges that the Subject Judges violated his rights "knowingly with bad intent." 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 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 acted to protect the prosecutor, were biased against Complainant, 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