

AUG 24 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90013

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 2015 a jury found _____ (the defendant) guilty
of various crimes, and in September 2015 the Subject Judge sentenced him to a term of
imprisonment. After that, Complainant authored and submitted on behalf of the
defendant a motion for a new trial based on newly discovered evidence, and he attached
affidavits from three individuals who stated that a government witness lied during the
defendant’s trial. The Subject Judge entered an order striking the motion because
Complainant was not licensed to practice law in the state and was not an attorney
admitted to practice in the district court.

Complainant prepared a motion for reconsideration in which he generally argued
that he was permitted to assist the defendant with his legal work. The Subject Judge
entered an order striking the motion for the same reasons set out in his previous order.
After that, two attorneys entered a notice of appearance on behalf of the defendant. In
June 2016 the defendant, through counsel, filed a motion for a new trial, arguing that
newly discovered evidence showed that the government’s key witness perjured himself
during trial, and he attached the affidavits of four individuals in support of the motion.

In December 2016 the Subject Judge entered an order denying the defendant’s
motion for a new trial. In setting out the background information, the Subject Judge
noted that a series of motions filed by the defendant were stricken because they were
authored by Complainant, “who was engaging in the unauthorized practice of law.”

The Subject Judge found not credible the affidavits from “a convicted felon, fellow prison inmate, and serial filer” that were attached to the motion authored by Complainant. The Subject Judge stated that the circumstances indicated “a coordinated effort by those involved to manufacture a controversy.”

The Subject Judge then determined that the affidavits, even if credible, did not constitute newly discovered evidence. Finally, the Subject Judge stated, “This attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate, is, to say the least, suspect.” In April 2017 the defendant filed a pro se motion to recuse the Subject Judge, generally taking issue with his December 2016 order and arguing that he was not impartial. The Subject Judge denied the motion to recuse.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge “expressed his personal bias against” Complainant in his December 2016 order in the defendant’s case, when he “accused [Complainant] of committing two crimes: (1) the unauthorized practice of law; and (2) facilitating the obstruction of justice.” Complainant states that he did not engage in the unauthorized practice of law because his “pro bono legal assistance is authorized by federal law,” and he argues that the “accusation of the unauthorized practice of law lacks any factual basis, both in the record and otherwise.”

Complainant states that the “obstruction of justice accusation is a scientific impossibility,” and the “evidence of the impossibility is present within the existing record” of the defendant’s case. He notes that he was not a party or a witness in that case and that no witness testified about him. He then states that the Subject Judge “imagines that [Complainant] created, gathered, and coordinated certain affidavits,” but that none of the affiants met with him until after the affidavits were prepared and “government field reports available to” the Subject Judge showed that he had no contact with the affiants before the affidavits were prepared.

Complainant then states that the Subject Judge’s “libel seems to arise from a deep set bias against either [Complainant] individually, or the mentally ill, or prisoners generally, or a combination of all.” He asserts that the Subject Judge’s “behavior denigrates the integrity of the judiciary,” “impugns [Complainant’s] character, threatens his mental health treatment . . . and seem[s] to have negatively impacted” the defendant. Finally, Complainant states that: (1) the Subject Judge “displays an unusual fixation” with Complainant; (2) his actions were “harmful and malicious” and “unbecoming for a federal judge”; and (3) he “should not use his judicial position to vent personal animus against [Complainant] or anyone.” Complainant attached to his Complaint the Subject Judge’s December 2016 order entered in the defendant’s criminal case.

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, findings, and orders entered in the defendant’s 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 allegations that the Subject Judge was biased against Complainant, the “mentally ill,” or prisoners, or that he 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