

AUG 24 2017

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90020

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”).

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

Background

The record shows that in November 2015 a federal grand jury indicted Complainant on one count of being a felon in possession of a firearm. In September 2016, after multiple appointed attorneys had withdrawn from the case, _____ was appointed to represent Complainant. Following a trial, the jury found Complainant guilty as charged.

At a sentence hearing in January 2017, _____ stated that he had learned that Complainant had filed a complaint against him with a state bar, and that Complainant wanted him to file legal objections that _____ did not believe were appropriate. The Subject Judge stated, “I think you’re a great lawyer, _____. I think you do a great job for your clients.” The Subject Judge then stated,

[Complainant], you don’t need to say anything, but this is the day of reckoning. I don’t know that you can do anything to delay it. Legitimate delays are fine, and I’m happy to grant continuances for legitimate delays. I don’t see what’s so legitimate about this. I don’t think you ought to talk to me. You are represented by counsel. You can talk through him.

Later in the hearing, the Subject Judge stated, "The taxpayers are done paying for you to go through six different lawyers. That is just absurd and ridiculous. It truly is." _____ then informed the court that Complainant had requested that he "tell the Court that should Your Honor allow him to have a Position of the Parties Meeting, he will stay -", and the Subject Judge responded, "I'm not going to do that. That's garbage. Come on, [Complainant]. The answer is no." _____ stated that Complainant had instructed him to request to withdraw as counsel of record, and the Subject Judge stated she would allow him withdraw. The Subject Judge added, "I'll just tell you, [Complainant], I'm done with lawyers. I'm done. And after this next person is appointed, you have a conflict with that person, that's your problem." She also stated, "You can't play us for fools here."

After the hearing, another attorney was appointed to represent Complainant. At a sentence hearing in March 2017, the Subject Judge sentenced Complainant to a term of 293 months of imprisonment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge "mistreated" him at the hearing in January 2017. He contends that when the Subject Judge learned that he had complained to the state bar about _____, the Subject Judge "became extremely angry," accused him of "playing the government for a fool," and told him that "today was reckoning day for me." He notes that he wrote a "good cause" letter to the Subject Judge detailing the ineffective assistance of counsel _____ was providing. Complainant then states that he was "denied the right to speak" at the hearing in violation of his First Amendment rights, and he later states that the Subject Judge "is siding against me without cause or reason."

Complainant complains that the Subject Judge did not question _____ about his failure to follow certain procedures or to file objections to the Presentence Investigation Report (PSI). Complainant notes that the Subject Judge stated she had "seen my kind before," that _____ was a good lawyer, and that she did not want to see _____ "get into a situation over" Complainant. He states that he filed a complaint against the Subject Judge alleging "extreme bias and prejudice reasoning," and that he is fearful of being sentenced "unfairly and unjustly." Complainant requests that a different judge be assigned to his case. He attached documents to his Complaint, including a "Request for Good Cause" in which he generally took issue with _____ failure to file objections to the PSI and requested that the Subject Judge provide him more time to review the PSI.

Supplements

In his first supplemental statement, Complainant describes the circumstances of his arrest, takes issue with the actions of his attorneys, and alleges that his due process rights were violated in his criminal case. He complains that the Subject Judge attempted to sentence him in January 2017 even after he filed a good cause letter addressing issues of ineffective assistance of counsel. He states, “I truly feel my case has had ‘bias and prejudice’ motive since the beginning.” In an attachment to the first supplement, Complainant states that the “court erred” in various respects in the case, including by sanctioning his “malicious arrest” and acting with a “bad motive toward [Complainant] through failure to adhere compliance with preexisting moral and ethical duties” He also contends that his sentence was “illegal” for various reasons.

In his second supplemental statement, Complainant alleges that the Subject Judge sentenced him “on bias and prejudice terms” and imposed a “vindictive sentence” on him. Complainant generally takes issue with the Subject Judge’s decisions and rulings at the March 2017 sentence hearing, stating, among other things, that she overruled his objections even though they “were correctly raised and made with lawful grounds,” and engaged in “[d]efamation of character and slandering” in describing his prior convictions. Complainant alleges that the Subject Judge knew she would not be able to handle his case without bias and prejudice, but refused to remove herself from the case. He attached various documents entitled “evidence of slandering statements and defamation of character” to his second 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 Judge’s official actions, findings, rulings, and orders entered in the case, the allegations

are directly related to the merits of the Subject Judge's decisions or procedural rulings. Complainant's remaining allegations fail to raise an inference that the Subject Judge was biased or prejudiced against him, acted with an illicit or improper motive, treated him in a demonstrably egregious and hostile manner, imposed a vindictive sentence, 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