

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 02 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-17-90083

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 July 2006 a federal grand jury issued an indictment charging: (1) _____ (_____) with 12 counts of willful failure to deduct and pay taxes; (2) _____ and _____ (_____) with 45 counts of structuring monetary transactions to evade a currency transaction reporting requirement; and (3) _____ with 1 count of obstructing administration of tax laws. The indictment also included a forfeiture provision. In September 2006 the defendants filed motions to dismiss the charges against them, arguing, among other things, that the indictment was fatally deficient, the applicable statute of limitations had run, and certain statutes were unconstitutional. In October 2006 the Subject Judge entered an order denying the motions to dismiss, finding they were untimely and lacked merit. _____ filed motions for reconsideration, which the Subject Judge denied.

Following a trial, in November 2006 a jury found the defendants guilty as charged in the indictment, and issued a verdict finding a certain amount of money was subject to forfeiture. Both defendants then filed motions for judgment of acquittal, which the Subject Judge denied. In January 2007 the Subject Judge sentenced _____ to a total term of 120 months of imprisonment and entered a final order of forfeiture as to him. In June 2007 the Subject Judge sentenced _____ to a total term of one year and one day of imprisonment and entered a final order of forfeiture as to her. Both defendants appealed.

In December 2008 this Court affirmed the defendants' convictions and sentences. This Court held that: (1) the indictment sufficiently alleged the crimes; (2) the evidence was sufficient to support the defendants' convictions; (3) the district court did not err by adding a sentence to the jury instructions; and (4) the district court did not commit reversible error in sentencing the defendants or in ordering a substitution of forfeiture property. The record shows that _____ then filed various unsuccessful motions for relief.

In December 2010 _____ filed an amended 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in which he raised various challenges to his convictions. The government filed a motion to dismiss the § 2255 motion as untimely, and in May 2011 the Subject Judge granted the motion to dismiss. This Court later denied _____ motion for a certificate of appealability. In August 2011 _____ filed a "Motion to Recuse and Disqualify" the Subject Judge, generally alleging that she was biased and prejudiced against him, and the Subject Judge denied the motion, finding there was no basis for her recusal.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant generally alleges that the Subject Judge engaged in misconduct by securing the false convictions of the _____. He alleges that the indictment was a product of prosecutorial fraud, and that the Subject Judge "accepted, ratified, approved of and joined in with said Fraud, knowingly, willingly and voluntarily in a conspiracy with the other actors named herein." Complainant then generally contends that the _____ were not guilty of the charges for various reasons, challenges the charges and forfeiture provision in the indictment, and asserts that the charges constituted "felonious Deprivations of Due Process and Malicious Prosecution . . . completed with the knowing, intentional, willing aid, collusion, participation and assistance of [the Subject Judge] as the fourth member of the conspiracy."

Complainant alleges that the Subject Judge: (1) was part of a conspiracy to deprive the _____ of their constitutional rights; (2) conspired with the prosecutors to destroy _____ ministry in violation of his First Amendment rights; (3) engaged in fraud and criminal acts by accepting the charges and convictions; and (4) knew or should have known the facts and law establishing that the _____ could not be found guilty on the charges. Complainant then "accuse[s] and charge[s]" the Subject Judge with numerous crimes, including misprision of felony, operating a continuing financial crimes enterprise, deprivation of rights under color of law, conspiracy, extortion, falsification of a material fact, frauds and swindles, falsification of records, peonage, and forced labor. He also raises allegations against individuals other than the Subject Judge. Finally, Complainant states that the actions and omissions of the Subject Judge and others has shocked his conscience and caused him to utterly lose faith in the federal criminal court system. In a

cover letter, Complainant demands that impeachment proceedings be instituted against the Subject Judge.

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 cases, the allegations are directly related to the merits of the Subject Judge’s 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 allegations that the Subject Judge was part of a conspiracy, committed crimes, 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