

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

OCT 29 2018

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-18-90069 through 11-18-90072

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against U.S. Magistrate Judges _____, _____, and _____, 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 Judges _____, _____, and _____, 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”). Judge _____ retired in _____.

Background

The record shows that in January 2013 a criminal complaint was issued charging Complainant with wire fraud and identity theft. Judge _____ then issued an arrest warrant directing that Complainant be arrested on the criminal complaint. Following Complainant’s arrest, a federal grand jury indicted him on multiple counts of making false claims to the Internal Revenue Service. After that, Complainant was released on a personal surety bond. In June 2013 Complainant entered into a plea agreement and pleaded guilty to the charges in the indictment. In October 2013 the government filed a motion to revoke Complainant’s pretrial release, noting that a state court judge had issued an arrest warrant for him on other charges. The same month, Judge _____ issued an arrest warrant directing that Complainant be arrested for a violation of his pretrial release.

After various proceedings, in April 2014 a district judge who is not one of the Subject Judges sentenced Complainant to a total term of 60 months of imprisonment. Complainant’s appeal was later dismissed after he filed a motion to dismiss it with prejudice. In May 2014 in the district court, Complainant filed a Fed. R. Civ. P. 60(b) motion for relief from judgment, arguing that: (1) the arrest warrants issued in the case were void because they did not satisfy the requirements of 28 U.S.C. § 1691;¹ and (2) the

¹ 28 U.S.C. § 1691 provides that “[a]ll writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.”

court lacked jurisdiction in the case due to the allegedly void warrants. In June 2014 Judge _____ issued an order dismissing the motion for lack of jurisdiction, and, in the alternative, denying the motion. Complainant's appeal was later clerically dismissed for want of prosecution.

In April 2015 Complainant filed a 28 U.S.C. § 2255 motion, and he argued, among other things, that the court lacked subject matter jurisdiction over his criminal case because the arrest warrants did not satisfy § 1691. A couple of months later, Judge _____ issued a report recommending that the § 2255 motion be denied. With respect to Complainant's challenge to the arrest warrants, Judge _____ found that Complainant: (1) was barred from raising the issue because he had failed to raise it on direct appeal; and (2) in any event, was not entitled to relief because a magistrate judge had found that the warrants were supported by probable cause, and, even if the warrants were unlawful, that would not void his conviction. Over Complainant's objections, Judge _____ adopted the report and denied Complainant's § 2255 motion. Complainant appealed, and this Court later denied his motion for a certificate of appealability because he failed to make a substantial showing of the denial of a constitutional right.

The record also shows that in January 2016 Complainant filed a Rule 60(b) motion for relief from judgment, again arguing that the arrest warrants were void, and the motion was docketed as a § 2255 motion to vacate. The next month, Judge _____ issued a report recommending that the case be dismissed for lack of jurisdiction, finding that: (1) to the extent Complainant's filing was a § 2255 motion, it was an unauthorized second or successive motion; and (2) to the extent the filing was a Rule 60(b) motion, he did not demonstrate that the judgment was void. Over Complainant's objections, Judge _____ adopted the report and denied the § 2255 motion. Complainant's appeal was later clerically dismissed for want of prosecution.

In May 2017 in his criminal case, Complainant filed a "Motion to Correct Record Nunc Pro Tunc," again arguing that the arrest warrants issued in the case were void because they did not comply with § 1691. Judge _____ entered an order dismissing the motion for lack of jurisdiction, and, in the alternative, denying it. Complainant filed a motion for reconsideration, which Judge _____ denied.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that Judges _____ and _____ violated the law and the Code of Conduct for United States Judges by issuing an arrest warrant that did not comply with 28 U.S.C. § 1691, which caused him to be "arrested illegally." Complainant alleges that Judge _____ "perpetrated fraud upon the court and upon this [C]omplainant by stating in his report that the district court could violate the law that requires the seal of the court and signature of the clerk on all writs and process issuing from a court of the United States"

Complainant asserts that Judge _____ “completely ignored the rule of law,” violated the Code of Conduct, and covered up the errors of other magistrate judges. He states that “[t]his pattern continued the fraud being perpetrated” on him “not only in this case, but two other cases.” He notes that this Court reversed Judge _____ decision in another case, which he asserts “[d]emonstrates a pattern of bias against” him.² He also states that Judge _____ “unethically prohibited [C]omplainant from obtaining redress for the Fourth Amendment violations that occurred.”

Complainant contends that: (1) the magistrate judges’ violations of the law “show a pattern of willful violation of the law and the Constitutional rights of a defendant”; (2) “[t]hese are not inadvertent errors because the law is jurisdictional”; and (3) the actions “diminish[] the judicial reputation of the court to non-existent.” Complainant attached documents to his Complaint. In one document, he alleges that Judge _____ “refused” to “correct the record by making void the warrants nunc pro tunc,” failed to provide authority for his decision, abused his discretion, and violated the Code of Conduct.

Discussion

Judge _____

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

To the extent the Complaint concerns Judge _____, in light of Judge _____ retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge _____.

The Remaining Subject Judges

² Complainant cites appeal No. _____, vacating the district court’s dismissal of Complainant’s civil action and holding that the court erred when it concluded that any amendment to his complaint would be futile.

Rule 3(h)(3)(A) 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 Judges _____, _____, and _____ official actions, findings, reports, and orders entered in Complainant’s cases, the allegations are directly related to the merits of those 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 Judges _____, _____, and _____ committed fraud, were biased against Complainant, violated the Code of Conduct for United States Judges, or otherwise engaged in misconduct.

Therefore, to the extent the Complaint concerns Judges _____, _____, and _____, 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** to the extent it concerns Judges _____, _____, and _____.



Chief Judge