

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

FEB 04 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90135

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 June 2014 a federal grand jury indicted Complainant on
one count of being a felon in possession of a firearm. Several months later, a superseding
indictment was issued adding a charge of possession of marijuana. The case proceeded
to trial.¹ After trial, the Subject Judge entered an order stating in part that: (1) after
Complainant presented his evidence, the court determined that his decision not to testify
was his own decision; (2) after several hours of deliberation, the jury advised the court
that it could not reach a unanimous verdict; (3) the court gave “the Modified Allen
Charge,” and the jury resumed deliberations; and (4) the jury found Complainant not
guilty on the firearm charge and guilty on the drug charge.

In January 2015 the Subject Judge sentenced Complainant to a term of 12 months
of imprisonment to be followed by 1 year of supervised release. In April 2016,
Complainant’s supervised release was revoked after he violated several conditions of it,
and the Subject Judge sentenced him to 12 months of imprisonment.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant asserts that the
government threatened him with additional criminal charges after he refused a plea deal

¹ No transcript of the trial appears on the district court’s docket.

and that the primary witness for the government lied during the trial. He complains that, after the jury indicated it was unable to render a verdict, the Subject Judge:

gave a speech, in which she stated that trials “cost a lot of money”, and that if more of the jurors are agreeing that I am guilty, then they should vote not guilty, but she “cannot force you to make that decision”, and that if more are agreeing guilty then the jurors should vote guilty, but that she “cannot force you to make that decision.”

Complainant alleges that the Subject Judge “got mad” at him during trial because he refused to take the stand and testify and “got an attitude and became very snappy towards [him] and disrespectful.” He asserts that, on the day he was acquitted of the firearm charge, the Subject Judge stated, “there was more than enough evidence to find you guilty and convict you on the gun case,” which he contends was “extremely inappropriate” and demonstrated bias. Complainant also states that he was informed he would receive the “harshest punishment possible” on the drug charge because he had been acquitted on the gun charge. Finally, he states that he believes he was wrongfully incarcerated because he was sent to a U.S. penitentiary for a misdemeanor.

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, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge treated him in a demonstrably egregious and hostile manner, was biased against him, 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