

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

OCT 28 2019

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint Nos. 11-19-90063 and 11-19-90064**

**IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_**

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IN RE: The Complaint of \_\_\_\_\_ against United States Magistrate Judge \_\_\_\_\_ and United States District Judge \_\_\_\_\_ of the United States 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.

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**ORDER**

\_\_\_\_\_ (“Complainant”) has filed this Complaint against United States Magistrate Judge \_\_\_\_\_ 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”).

Background

The record shows that in April 2017 a federal grand jury issued an indictment charging Complainant with drug and firearm-related offenses. In June 2017 Complainant, through appointed counsel, filed a motion to suppress evidence found during a search of his automobile. After that, Complainant’s counsel filed a motion to withdraw due to a conflict of interest, and Judge \_\_\_\_\_ granted the motion and appointed \_\_\_\_\_ to represent Complainant. In June 2018 Complainant, through \_\_\_\_\_, filed multiple notices of the issuance of subpoenas *duces tecum*. Judge \_\_\_\_\_ issued an order noting that, although it appeared Complainant may have intended to file motions for the issuance of subpoenas, the notices were not styled as motions and no relief was requested.

Following a hearing, in September 2018 Judge \_\_\_\_\_ recommended that the motion to suppress be denied, finding Complainant did not have a reasonable expectation of privacy in the area searched. Over Complainant’s objections, Judge \_\_\_\_\_ entered an order adopting the recommendation and denying the motion to suppress. After that, Complainant filed, among other things, a *pro se* motion stating that he was representing himself in the case, and Judge \_\_\_\_\_ entered an order granting the motion to the extent Complainant sought to represent himself and appointing \_\_\_\_\_ as standby counsel.

After that, Complainant filed numerous pro se motions seeking various types of relief, and the Subject Judges issued orders ruling on Complainant's motions. For example, in February 2019 Judge \_\_\_\_\_ issued an order denying a motion to compel Complainant had filed, finding that it was a discovery motion that did not meet the conferencing and certification requirements set out in the court's standing order on criminal discovery. A couple of months later, following multiple motions in which Complainant took issue with the actions of \_\_\_\_\_, the court appointed Complainant new standby counsel.

In April 2019 Complainant filed multiple motions alleging that Judge \_\_\_\_\_ had practiced law from the bench, had blocked him from obtaining material evidence, had used the standing order on discovery to force him to expose his trial strategy to the prosecution, was biased and prejudiced against him, and had "confounded" the subpoena process. He filed a response to an order and sought the removal of Judge \_\_\_\_\_ from the case, asserting that she had engaged in treason.

In addition, Complainant filed a "Motion to Compel Discovery and to Compel Compliance with Already Served and Granted Subpoena Duces Tecum." Later in April 2019 Judge \_\_\_\_\_ issued an order on the motion to compel that: (1) described the court's previous rulings pertaining to the issuance of subpoenas; (2) stated that Complainant had an "apparent misunderstanding" of the discovery standing order; (3) noted that certain proposed subpoenas submitted by Complainant's former counsel were not accompanied by motions and that no subpoenas were issued as a result; and (4) ordered a Sheriff's Department to respond to a subpoena even though Complainant had failed to meet the conferencing requirement.

In May 2019 Judge \_\_\_\_\_ entered an order denying Complainant's request to remove Judge \_\_\_\_\_. In the order, Judge \_\_\_\_\_ stated that the court would not tolerate Complainant's attacks on the integrity of the judiciary and its officers and warned him that continuation of such behavior at trial could result in the revocation of his pro se status and his removal from the courtroom. Judge \_\_\_\_\_ also issued an order construing one of Complainant's motions as a motion to recuse her from the case and denying the motion.

Following a trial, the jury found Complainant guilty as charged in the indictment. After that, Complainant filed multiple motions seeking relief from his convictions and raising various allegations of misconduct, and Judge \_\_\_\_\_ denied those motions and warned Complainant that the court would sanction him if he continued to submit vague, conclusory, and unsupported filings. In August 2019 Judge \_\_\_\_\_ sentenced Complainant to a total term of 420 months of imprisonment.

The record also shows that in April and May 2019 Complainant filed in this Court petitions for writ of mandamus in which he took issue with the Subject Judges' actions in the criminal case and raised allegations of government misconduct. He filed motions to proceed in forma pauperis (IFP) in both cases. In July 2019 this Court issued an order consolidating the cases and denying his IFP motions because the mandamus petitions were frivolous. This Court later clerically dismissed the petitions for want of prosecution.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judges "confounded the subpoena process" to prevent him from obtaining evidence critical to his defense. He contends that the Subject Judges: (1) used local discovery rules "as an obstacle by misconstruing subpoena duces tecum into discovery"; (2) denied him assistance in enforcing his subpoenas by construing his requests as discovery motions; and (3) required him to confer with the opposing party on discovery when the issues did not relate to discovery but to subpoenas. He states that the court knew he would be required to reveal his defense strategy at trial by disclosing what materials he was requesting.

Complainant asserts that the Subject Judges ignored Supreme Court precedent providing that pro se filings are to be liberally construed. He alleges that the Subject Judges routinely construed his pro se filings to prejudice him and used the caption of his filings to misconstrue and deny them, which denied him access to the court, due process, and the ability to obtain materials to present a defense. He contends that Judge \_\_\_\_\_ blamed him for misunderstanding her orders, when two attorneys could not understand the "unorthodox" orders. Complainant asserts that the Subject Judges did not give his filings full and fair consideration. He argues that he filed the same motion that had been filed by attorneys, and while the attorneys' motions required a response, his was "arbitrarily denied."

Complainant takes issue with the actions of \_\_\_\_\_ in the case and alleges that the court denied him the effective assistance of counsel at the suppression hearing. He contends that the Subject Judges: (1) denied him the opportunity to correct \_\_\_\_\_ mistakes; (2) appointed \_\_\_\_\_ to represent him as standby counsel despite his complaints about \_\_\_\_\_; (3) used \_\_\_\_\_ "as an obstruction" and to impede his ability to present his defense at trial; and (4) required him to consult \_\_\_\_\_ with whom he had a breakdown in communication. Complainant states that the Subject Judges have "nullified the adversarial system" in his case. He also alleges that the Subject Judges are "vindictive." He contends that they used his right to a speedy trial against him by timing their orders to ensure he did not have necessary materials for trial and that they deprived him of his constitutional rights.

## Discussion

Rule 4(b)(1) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, “Allegations Related to the Merits of a Decision or Procedural Ruling,” provides in part that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” The “Commentary on Rule 4” states in part:

Rule 4(b)(1) 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 authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge’s decision or procedural ruling. Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.

To the extent Complainant’s allegations concern the substance of the Subject Judges’ official actions, rulings, findings, and orders in the case, the allegations are directly related to the merits of the Subject Judges’ decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judges acted with an illicit or improper motive, purposefully misconstrued his filings, were vindictive, 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**.



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Chief Judge