

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

MAR 02 2020

David J. Smith  
Clerk

**CONFIDENTIAL**

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

**Judicial Complaint No. 11-19-90092**

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

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IN RE: The Complaint of \_\_\_\_\_ against 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 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 a supplemental statement. The filing of the supplemental statement is permitted. See 11th Cir. JCDR 6.7.

Background

The record shows that in August 2017 a federal grand jury issued an indictment charging Complainant and multiple codefendants, including \_\_\_\_\_, with various offenses. In November 2017 \_\_\_\_\_ pleaded guilty to a lesser-included offense in one count of the indictment. Following a sentence hearing in April 2018, the Subject Judge entered a judgment sentencing \_\_\_\_\_ to eight months imprisonment.

Meanwhile, in January 2018 Complainant pleaded not guilty to the charges against him. A few months later, he filed a counseled motion to suppress wiretap evidence, generally alleging the evidence was obtained in violation of his constitutional rights. After various proceedings, in May 2019 a magistrate judge issued a report recommending denial of the motion to suppress, finding that the evidence obtained was admissible under the “good-faith exception” to the warrant requirement and, in any event, the wiretap authorizations satisfied statutory and constitutional requirements.

Over Complainant’s objections, the Subject Judge entered an order adopting the report and recommendation and denying the motion to suppress. Following a trial, in

August 2019 a jury found Complainant guilty as charged in the indictment. Complainant filed, among other things, a motion for judgment of acquittal and for a new trial, which the Subject Judge denied.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that he was held for over 500 days as a pretrial detainee on wiretap evidence that the Subject Judge “permitted,” and he alleges that the Subject Judge violated his constitutional rights and conspired with others to deprive him of his rights. Complainant contends that the indictment should be dismissed due to unnecessary delay and that the indictment was not based on probable cause. Finally, he takes issue with the representation he received from his appointed counsel. He attached documents to his Complaint.

### Supplement

In his supplemental statement, Complainant alleges that the Subject Judge “abandoned his neutral role and engaged in personal bias judgment” at the sentence hearing of \_\_\_\_\_, who is his codefendant and fiancée. He states, “In open court [the Subject Judge] assured [\_\_\_\_\_] that nobody was going to trial on this case, in fu[r]th[e]rance of his irrational allegations and personal bias he stated the next time she should make a better choice in men.” Complainant asserts that the Subject Judge’s biased and prejudiced comments impaired his ability to receive a fair trial. He also states: (1) the Subject Judge’s “poor choice of words clearly show[s] conflict of interest, and misconduct”; (2) he has been held “well outside of the speedy trial clause of the Constitution”; and (3) the Subject Judge and others “placed substantial violations on [his] liberty and 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.

In addition, Rule 4(b)(2) provides that cognizable misconduct does not include “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.” The “Commentary on Rule 4” provides that “a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.*, assigning a low priority to deciding the particular case.”

To the extent Complainant’s allegations concern the substance of the Subject Judge’s official actions, findings, rulings, 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 was part of a conspiracy, was biased or prejudiced against him, had a conflict of interest, 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