

**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-19-90094

**FILED
ELEVENTH CIRCUIT
JUDICIAL COUNCIL**

SEP 10 2020

CIRCUIT EXECUTIVE

**IN RE: COMPLAINT OF JUDICIAL
MISCONDUCT OR DISABILITY**

ON PETITION FOR REVIEW

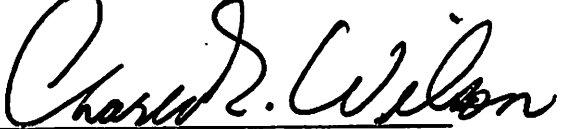
Before: WILLIAM PRYOR, Chief Judge, WILSON, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, and LUCK, Circuit Judges; MERRYDAY, MOORE, THRASH, COOGLER, DuBOSE, HALL, TREADWELL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Wilson, Martin, Branch, Coogler, and Walker, the order of then-Chief Judge Ed Carnes, filed on 6 May 2020, and of the petition for review filed by the complainant on 15 June 2020, with no non-disqualified judge on the Judicial Council Review Panel having requested that this matter be placed on the agenda of a meeting of the Judicial Council,

The Judicial Council Review Panel hereby determines that the disposition of this matter was proper and said disposition is hereby **AFFIRMED**.

The foregoing actions are **APPROVED**.

FOR THE JUDICIAL COUNCIL:


United States Circuit Judge

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-19-90094

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 06 2020

David J. Smith
Clerk

IN THE MATTER OF A COMPLAINT FILED BY _____

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.

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 February 2014 a federal grand jury indicted _____¹ and a codefendant on charges of conspiracy, mail fraud, wire fraud, and money laundering. Following a trial, in May 2015 the jury found _____ guilty of multiple counts and was unable to reach a verdict as to other counts. A couple of months later, _____ filed a notice of appearance on behalf of _____ and a motion to continue sentencing, which was scheduled to occur the next week. _____ two other attorneys filed a motion to withdraw in light of _____ appearance.

At a July 2015 hearing on the motion to withdraw, _____ stated that _____ family had retained him on the day he filed his notice of appearance and stated that the “family has moved with all practical speed on this.” The Subject Judge responded that he “disagree[d] with your assertion that the family has moved with all efficiency and speed here. They haven’t done that at all.” The Subject Judge ultimately granted the motion to withdraw and motion to continue sentencing. In August 2015 the Subject Judge sentenced _____ to a total term of 204 months of imprisonment. _____ filed a notice of appeal.

¹ Complainant states that she is _____ mother.

In March 2016 _____ filed a Fed. R. Crim. P. 33 motion, which had been prepared by another inmate, seeking a new trial based on newly discovered evidence. The motion included as attachments affidavits from three people who stated that the government's key witness had lied at trial. The Subject Judge ordered that the motion be stricken because it was submitted and authored by someone who was not an attorney. In July 2016 _____, through counsel, filed an amended Rule 33 motion for new trial based on newly discovered evidence, arguing that four people had submitted affidavits stating that the government's key witness had lied at trial. The affidavits and other documents were attached to the motion.

In December 2016 the Subject Judge issued an order denying _____ amended motion for new trial, finding that the affidavits submitted in support of the motion were not credible and did not constitute new evidence. The Subject Judge noted that three of the four affidavits: (1) initially were submitted with the motion that was stricken because it was authored by an inmate who was engaged in the unauthorized practice of law; and (2) were prepared in the same font and format and were dated the same day. The Subject Judge then stated:

These circumstances indicate a coordinated effort by those involved to manufacture a controversy. Finally, it is not lost on this Court that Defendant's underlying conviction involved an unlawful and fraudulent scheme, one considerably more complex than the scheme Defendant is currently employing in his attempt to garner a new trial. Accordingly, the Court does not find the Defense Affidavits credible.

In conclusion, the Subject Judge stated, "This attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate, is, to say the least, suspect." _____ filed a notice of appeal as to the order denying the motion for new trial.

_____ later filed a pro se motion to recuse the Subject Judge and to file a new Rule 33 motion, and the Subject Judge denied the motion for the reasons stated in the December 2016 order and because there was no basis for recusal. _____ filed a motion for clarification, which the Subject Judge denied. _____ then filed a third notice of appeal. _____ three appeals were consolidated, and in March 2019 this Court issued an opinion that, among other things, affirmed _____ convictions and sentences, as well as the denial of his Rule 33 motion for new trial.

Complaint

In her Complaint of Judicial Misconduct or Disability, which Complainant states she is filing on her and her husband's behalf, she alleges that the Subject Judge engaged in "outrageous misconduct" in _____ case that has "affected our lives, both

financially and emotionally, for years now.” She states they would have reported the Subject Judge’s alleged misconduct earlier but were “scared of retaliation” against _____.

Complainant states that, after _____ trial, a law firm informed her and her husband that the firm had received affidavits stating that a government witness had lied to obtain _____ conviction, and they paid to have the firm file a motion for new trial on _____ behalf. Complainant states that the Subject Judge’s December 2016 order denying the motion for new trial “destroyed our lives.” She quotes these statements made by the Subject Judge: “These circumstances indicate a coordinated effort by those involved to manufacture a controversy,” and the “underlying conviction involved an unlawful and fraudulent scheme, one considerably more complex than [this] scheme.”

Complainant alleges that the Subject Judge “accused us of a crime that we didn’t commit” and “attack[ed]” them, and she asserts that the statements were “[o]bviously” directed at her and her husband “because if it wasn’t for us nothing could have been filed.” Complainant contends that the Subject Judge “is saying that we are using our money to pay off government agents, [a law firm], lawyers, and private investigators to buy our son out of prison.” She contends that the Subject Judge’s statements were not necessary for a finding that Mr. _____ should not get a new trial. She also asserts that the Subject Judge’s “hostility against me and my husband is simply appalling.” Complainant states that the Subject Judge’s comments have negatively affected the way people view her and her husband in their community and have had a negative impact on litigation involving their company, asserting that they “lost money, a big lawsuit, business, and our credibility in the community due to” the comments.

In a footnote, Complainant states that the transcript of the July 2015 hearing on the motion to withdraw shows that the Subject Judge was “very upset” at her and her husband because they did not find a new lawyer for their son fast enough. She states that she and her husband cannot understand why the Subject Judge “doesn’t like” them, but they “have a feeling that it[’]s because in 2006 we won an appeal that reversed one of the judges in [the Subject Judge’s] courthouse.” Complainant attached documents to her Complaint.

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 Judge’s official actions, rulings, findings, and orders in _____ 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 acted with an illicit or improper motive, treated Complainant and her husband in a demonstrably egregious and hostile manner, or otherwise engaged in misconduct. The Subject Judge’s challenged statements in the December 2016 order were relevant to the finding that the affidavits in support of the motion for new trial were not credible.

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