

CONFIDENTIAL

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

MAY 06 2020

Judicial Complaint No. 11-19-90112

David J. Smith  
Clerk

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

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IN RE: The Complaint of \_\_\_\_\_ against \_\_\_\_\_, United States  
Magistrate Judge for 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 \_\_\_\_\_ (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 December 2014 Complainant and several codefendants  
were charged in a superseding indictment with various offenses related to a large-scale  
drug trafficking and money laundering conspiracy. In March 2015 Complainant  
appeared before the Subject Judge and entered a guilty plea to two conspiracy charges.  
The Subject Judge entered a report recommending that the guilty plea be accepted. The  
district court adopted the report and recommendation.

Before sentencing, Complainant filed a pro se motion requesting a hearing  
regarding his attorney’s alleged ineffectiveness. At the hearing before the district court in  
July 2015, Complainant also moved to withdraw his guilty plea based on the alleged  
ineffectiveness of his attorney. After hearing from Complainant’s attorney, the district  
court denied the motion, determining that there was no basis for concluding that  
Complainant’s plea was unknowing and involuntary. The district court then adjudicated  
Complainant guilty and sentenced him to 180 months imprisonment. Complainant’s  
convictions and sentence were affirmed on direct after this Court granted his attorney’s  
motion to withdraw under Anders v. California, 386 U.S. 738 (1967).

In March 2018 Complainant filed a motion to vacate his sentence, under 28 U.S.C.  
§ 2255, raising several claims about the ineffectiveness of his trial and appellate  
attorneys, trial court error, and the involuntariness of his plea. In April 2018  
Complainant amended his § 2255 motion to add additional claims about the

ineffectiveness of his appellate attorney. In August 2019 the Subject Judge entered report recommending that the § 2255 motion be denied without an evidentiary hearing. The Subject Judge determined that Complainant had not demonstrated that his trial or appellate attorneys were ineffective, that the trial court erred as alleged, or that he was otherwise entitled to relief based on an involuntary, unknowing, or unintelligent guilty plea. The district court adopted the report and recommendation over Complainant's objections and denied Complainant's § 2255 motion. The district court denied Complainant a certificate of appealability.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge acted in violation of the Code of Conduct for U.S. Judges and 28 U.S.C. § 455(a) by entering an adverse recommendation on his § 2255 motion. Complainant asserts that the Subject Judge should have been disqualified from his § 2255 proceedings because the Subject Judge conducted the plea colloquy in his criminal case, and therefore, had personal knowledge of the disputed facts and had expressed an opinion regarding the merits. Additionally, Complainant asserts that the Subject Judge's findings in the § 2255 proceedings demonstrate the Subject Judge's prejudice against him and lack of impartiality. Complainant contends that the Subject Judge was placed into a "very conflicting position" because he was challenging the voluntariness of his plea and the Subject Judge had already ruled on that issue. Complainant also contends that the Subject Judge ignored new facts and the Subject Judge's findings regarding his § 2255 motion indicated bias and were based on the Subject Judge's earlier findings at the plea colloquy. Complainant asserts that the Subject Judge should never have considered his § 2255 motion and requests that his § 2255 motion be reconsidered by a judge with no prior knowledge of his case.

### 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 that Complainant's allegations concern the substance of the Subject Judge's official actions, rulings, findings, R&Rs, and orders in the case, the allegations are directly related to the merits of the Subject Judge's 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 the Subject Judge was biased, 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**.

  
\_\_\_\_\_  
Chief Judge