

CONFIDENTIAL

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

Judicial Complaint No. 11-19-90143

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 13 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 August 2016 an Information was filed charging Complainant with bank fraud and conspiracy to commit mail and wire fraud. A few months later, Complainant pleaded guilty to the charges in the Information, and in October 2016 the Subject Judge accepted the plea.

The record also shows that in April 2015, in a district court in _____, a federal grand jury indicted Complainant on charges of passport fraud and aggravated identity theft, and in September 2019 the case was transferred to the United States District Court for the _____ District of _____. Complainant later pleaded guilty as charged in the indictment, and in December 2016 the Subject Judge accepted the plea.

A sentence hearing for both cases was held before the Subject Judge in February 2017. At the hearing, the government contended, among other things, that Complainant’s crimes involved sophisticated means because he had caused an attorney to file lawsuits in the court to fraudulently obtain insurance proceeds. Later in the hearing, the Subject Judge stated that Complainant was convicted of committing “a particularly pernicious fraud which counts as its victims banks, insurance companies, governmental agencies, his friends, his family, and even this very court.”

The Subject Judge also stated that “in terms of pure evil or the willingness to involve and dupe” Complainant’s wife and friends, “in the spectrum of frauds, it really ranks as among the more serious fraud cases I’ve seen.” The Subject Judge found that a “substantial upward variance” from the guidelines range was appropriate, and imposed a total sentence of 168 months of imprisonment, representing an 81-month upward variance from the top of the guidelines range. Toward the end of the hearing, the Subject Judge stated, “And notwithstanding the sentence I’ve given you, I certainly do wish you well and I do wish your family well.” Following issuance of the judgment, Complainant appealed.

In September 2018 Complainant’s sentences were affirmed. This Court’s opinion noted that the Subject Judge was the same judge who had presided over civil cases in which Complainant’s wife fraudulently attempted to recover life insurance proceeds. The opinion explained that harm to the court was not an improper factor for the district court to rely on when it imposed the sentence, and when understood in context, references to the court’s involvement in the lawsuits that sought fraudulent insurance payments were not improper. The district court’s explanation made it clear that it did not consider itself a victim in Complainant’s fraud in the traditional sense, and instead it was accounting for Complainant’s abuse of the judicial system generally as a means to facilitate his fraud. In a footnote, this Court’s opinion also stated that the comments did not evidence partiality.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the transcript of the sentence hearing shows that the Subject Judge was personally biased against him. He contends that the Subject Judge stated more than once that he considered himself a victim of Complainant’s crimes. He states that the Subject Judge’s demeanor “indicated a very personal bias” against him. Complainant also alleges that the Subject Judge had a “personal relationship with other individuals involved in” the cases who were victims and that the Subject Judge “made sure that his friends got their ‘pound of flesh.’”

Complainant alleges that the Subject Judge knew him “through community, religious, and social organizations” in which they “may have both been involved.” He asserts that the Subject Judge’s “involvement in these matters” biased his decisions, evidenced by the “unjustified sentence” he imposed, and he had an “unprofessional and emotionally tainted demeanor” during the sentence hearing and was “visibly angry, at having been ‘personally’ embarrassed.” Complainant requests that the Subject Judge be investigated and removed from his cases.

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 the cases, 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 personally biased against Complainant, had a conflict of interest, used his office to benefit his friends, treated Complainant in a demonstrably egregious and hostile manner, 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