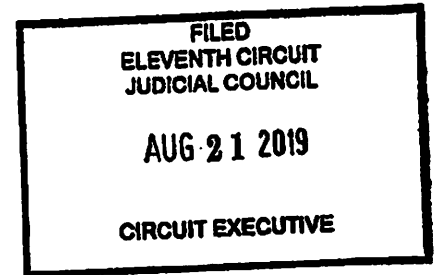


**FOR THE JUDICIAL COUNCIL
OF THE ELEVENTH CIRCUIT**

11-18-90148



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

ON PETITION FOR REVIEW*

Before: TJOFLAT, MARCUS, WILSON, WILLIAM PRYOR, MARTIN, JORDÁN, ROSENBAUM, JILL PRYOR, and NEWSOM, Circuit Judges; MOORE, MERRYDAY, THRASH, BOWDRE, LAND, DuBOSE, HALL, WALKER, and MARKS, Chief District Judges.

Upon consideration of the petitioner's complaint by a review panel consisting of Judges Tjoflat, Wilson, William Pryor, Land, and Walker, the order of Chief Judge Ed Carnes, filed on 24 May 2019, and of the petition for review filed by the complainant on 19 June 2019, 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

* Chief Circuit Judge Ed Carnes did not take part in the review of this petition.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 24 2019

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-18-90148

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against _____, U.S. District Judge for
the U.S. 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”).

As an initial matter, after Complainant filed his Complaint, he filed five
supplemental statements. The filing of the supplemental statements is permitted. See
11th Cir. JCDR 6.7.

Background

The record shows that in August 2011 a federal grand jury indicted Complainant
and a codefendant on various charges, including multiple counts related to sex
trafficking. At an initial appearance where Assistant United States Attorney
appeared on behalf of the government, a magistrate judge noted that the indictment would
be unsealed and stated, “The charges are summarized as sexual exploitation of a minor
and sex trafficking of children by force, fraud or coercion.” _____ stated, “Your
Honor, as a correction, there is no allegation that there were any minors involved.”

After various proceedings, in October 2011 the grand jury issued a superseding
indictment, charging Complainant with multiple counts related to sex trafficking and
distribution of a controlled substance. Complainant pleaded not guilty to the charges and
proceeded to trial, and _____ acted as the prosecutor in the case. A jury found
Complainant guilty on 18 counts charged in the superseding indictment. In February
2012 the Subject Judge sentenced Complainant to a total term of life imprisonment.
Complainant appealed his convictions and sentences, and he later appealed a forfeiture
order.

In August 2012 Complainant filed a motion for disclosure of grand jury transcripts and materials, arguing that they were necessary to establish whether the grand jury was influenced by the suggestion that the acts committed involved minors. The next month, the Subject Judge denied the motion, generally finding that Complainant had not demonstrated a compelling and particularized need for disclosure of the grand jury transcripts. Complainant also appealed that order. In March 2013 Complainant filed two motions requesting information about the grand jury, which the Subject Judge denied, finding that he had failed to meet his burden to justify disclosure.

In May 2014, after consolidating Complainant's appeals, this Court affirmed Complainant's convictions and sentences and affirmed the denial of disclosure of grand jury transcripts and materials. This Court held, among other things, that: (1) Complainant had waived his challenges to the indictment; (2) the evidence was sufficient to sustain his convictions; and (3) his argument that the government had improperly withheld evidence was meritless. Addressing Complainant's argument that the indictments were procured by deception, this Court held that even if his allegations of misconduct were true, the jury verdict rendered any error harmless.

In January 2016 Complainant filed a counseled 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, raising various challenges to his convictions. A few months later, he filed an amended § 2255 motion, arguing, among other things, that his counsel was ineffective for failing to challenge the indictment and superseding indictment on the ground that "each was obtained by the government misleading the grand juries that the alleged crimes . . . involved minors." The government, through Assistant United States Attorney _____, filed a response. In October 2016 Complainant filed a reply and requested an evidentiary hearing.

In June 2017 a magistrate judge entered an order and report denying Complainant's motion for an evidentiary hearing and recommending that his § 2255 motion be denied. The magistrate judge found in part that there was no merit to Complainant's claim that the government had misled the grand jury into believing that he had been involved in crimes against minors. In August 2017 Complainant filed objections to the report. He also filed a motion to terminate counsel and proceed *pro se*, which the Subject Judge granted.

In December 2017 the Subject Judge issued an order adopting the magistrate judge's report with certain exceptions, denying Complainant's § 2255 motion, denying him a certificate of appealability (COA), and denying as unnecessary his request for an evidentiary hearing. After that, Complainant filed an amended Fed. R. Civ. P. 59(e) motion to alter or amend the judgment, which the Subject Judge denied. Complainant appealed and filed a motion for COA in this Court. In January 2019 this Court denied Complainant's motion for a COA, holding that he had failed to make the requisite showing.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges that the Subject Judge has a personal bias against him and a “racial prejudice, judicial prejudice/bias, and [an] outright impartiality to black males who find themselves as defendants in his courtroom.” Complainant asserts that the Subject Judge: (1) “go[es] out of his way in order to conceal the many crimes/judicial misconduct he himself has committed”; (2) “go[es] out of his way to protect others who commit crimes within his courtroom as long as it’s against the black defendant”; and (3) “will even ignore and over rule Circuit Precedent . . . to ensure that the defendant unjustly loses his or her case.” He later states that the Subject Judge’s “unlawful sentence of 13 consecutive life terms should be more than enough to alert this Office of his prejudice” and bias toward Complainant.

Complainant asserts that _____, with the help of the Subject Judge: (1) “fabricated an entire federal case against” him; (2) “secretly concealed exculpatory evidence”; and (3) “lied to a federal grand jury concerning completely factious [sic] minors/children” because he knew this would cause the grand jury to issue an indictment. Complainant states that “one of the reasons” the Subject Judge denied Complainant’s § 2255 motion and Rule 59(e) motion was to prevent him from having an evidentiary hearing “for fears of the expansion of the record that would prove everything I’ve been saying against him, and _____ to be true.” He argues that the Subject Judge did not allow an evidentiary hearing “because evidence would come fo[r]th that he himself is involved in criminal and judicial misconduct and disability.” Complainant asserts that the Subject Judge: (1) “acts as a gatekeeper of this evidence for” _____ and _____; and (2) “aided and abetted _____ into concealing these crimes against me for years until now.”

Complainant states that the Subject Judge “has now been caught red handed being a material witness for his close friend _____.” He states that, in connection with a Bar Complaint, _____ submitted a sworn affidavit in which he listed the Subject Judge as a witness who would help him prove his version of events. Complainant contends that this requires the Subject Judge’s disqualification from his case under 28 U.S.C. § 455(b)(3). Complainant asserts that the Subject Judge: (1) “bailed _____ out of being found guilty by the _____ Bar”; (2) did _____ a “favor” by being a witness on his behalf; (3) violated the Code of Conduct for United States Judges by being a character witness and material witness in the Bar proceedings; and (4) lent the prestige of his office to aid _____ in having a bar complaint dismissed.

Complainant alleges that an email _____ sent to Complainant’s attorney contained multiple lies, and he asserts that the Subject Judge knew _____ lied but lent the prestige of his office to aid and abet him in concealing the lies and to help him

commit perjury. Complainant attaches what he claims is “direct evidence” that the Subject Judge was used as a material witness for _____ “outside of a federal proceeding,” and that the Subject Judge and _____ concealed “exculpatory reports about the illegal use of minors/children that were used to federally indict” him.

Complainant attached various documents to his Complaint. In one attachment, he alleges that: (1) the Subject Judge aided and abetted _____ effort to conceal information by sealing certain reports and other information, and he asserts that (2) the indictment, superseding indictment, and a search warrant were fraudulent. He contends that certain documents establish that the grand jury was told that minors or juveniles were the victims in the case. Complainant alleges that: (1) the Subject Judge was “impaired by his alliance with” _____, which caused him to be “unable to function properly”; (2) his conduct caused a substantial and widespread lowering of public confidence in the courts; and (3) he used his office to obtain special treatment for his friends.

Complainant also attached a January 2015 letter from _____ to the Bar responding to a complaint that Complainant filed against him. In the letter, _____ generally argued there was no evidence in support of Complainant’s allegations that he lied to the grand jury about the involvement of minor children, sealed certain documents to prevent Complainant to accessing them, or failed to disclose exculpatory evidence. In conclusion, _____ stated, “Indeed, if you have any questions at all about my conduct during the course of this case, I would urge you to contact,” various individuals, including “the federal judge who heard the case, the Honorable _____.” _____ stated:

all of whom, I have no doubt, will confirm that I prosecuted this case fairly and to the best of my abilities, that I never lied or falsified any documents or evidence, that I never withheld any evidence from the defense, let alone exculpatory evidence, and that I at all times conducted myself in a manner befitting an officer of the court and a proper public servant.

Supplements

In his first supplemental statement, Complainant generally reiterates his arguments that the Subject Judge improperly acted as a material witness for _____, as established by _____ January 2015 response to the _____ Bar. In his second supplemental statement, Complainant reiterates certain allegations and also alleges that the Subject Judge should have disqualified himself from the § 2255 proceedings “because of his injection into the proceedings of the _____ Bar Complaint,” and Complainant contends that the outcome of either proceeding could affect the other.

In the third supplemental statement, Complainant reiterates various allegations and contends the Subject Judge must be disqualified because he had personal knowledge of

disputed evidentiary facts concerning the _____ Bar proceedings, which was an extrajudicial source. He asserts that the Subject Judge: (1) learned about new evidence during the _____ Bar proceedings that would have helped Complainant prove that his indictment initially charged him with crimes against minors; and (2) used information from the Bar proceeding to unlawfully deny Complainant an evidentiary hearing in the § 2255 case. Complainant asserts that the Subject Judge and _____ “are very close friends” and that Subject Judge supported _____ in his efforts to become a federal district judge. He attached documents to his third supplement. In his fourth supplement, Complainant contends that the Subject Judge was required to recuse himself from the case, and that he has a “very harsh disdain/bias [sic] against” Complainant. In his fifth supplement, Complainant generally reiterates his arguments that the Subject Judge should be recused.

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, findings, rulings, and orders in Complainant’s 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: (1) had a personal bias against him; (2) was racially biased or prejudiced; (3) was not impartial; (4) concealed crimes, misconduct, or evidence; (5) conspired with or aided _____ in committing crimes, fabricating documents, or withholding evidence; (6) improperly acted as a witness in _____ proceedings before the _____ Bar; (7) used his office to obtain special treatment for his friends; (8) violated the Code of Conduct for United States Judges; or (9) 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