

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUN 17 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90020

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 March 2019 a federal grand jury indicted _____ on nine counts of unlawful distribution of a controlled substance. A district judge who is not the Subject Judge was assigned to the case. A superseding indictment was issued in September 2019 adding additional charges, and the defendant pleaded not guilty to the charges. The government later moved to dismiss four counts, and the district judge granted the motion to dismiss those counts. The case proceeded to trial.

After multiple days of trial before the presiding district judge, the jury began deliberations on January 29, 2020. The next day, the Subject Judge stated that the presiding district judge was out of town and had asked the Subject Judge to cover the trial in his absence. The jury continued to deliberate that day.

A transcript of the proceedings on January 31, 2020 shows that, in chambers, the Subject Judge and counsel for both parties discussed the possibility of the jury rendering a verdict while the defendant’s plea was being taken. The courtroom deputy clerk then stated:

Judge, they had a question earlier. There’s some media in the courtroom. And if by chance they’re in the middle of the plea and, say, [the defendant] stands up and says, I’m not going to do this, they’re afraid about the media

and jurors hearing each other. Like if the jurors were to hear the media talking on the phone about it. Is there any way to handle that?

The Subject Judge responded, "The only way I can do it is clear the courtroom." Counsel for both parties indicated they did not want the courtroom cleared, and the Subject Judge responded, "Well, I think I have to. If the government's going to buckle at the knees, we're going to clear the courtroom." He continued, "Go out there and clear it. Get everybody out of the courtroom and I'll come out."

At that point, the proceedings occurred in the courtroom, and the Subject Judge stated he had been informed that the defendant had decided to plead guilty to one count in the superseding indictment pursuant to a written plea agreement. After additional proceedings, the defendant stated she desired to plead guilty to one count, and the Subject Judge accepted the plea and adjudicated her guilty of the offense alleged.

After that, the Subject Judge directed that the jurors be told to cease their deliberations, and the jury returned to the courtroom. Apparently at this time, the public also re-entered the courtroom. The Subject Judge then informed the jury that the defendant had pled guilty to one charge in the superseding indictment. He also informed the jury that the presiding district judge had committed to participate in a seminar and had asked the Subject Judge to sit in for him. The Subject Judge then stated, "Thank you for being here, and go return to your homes."

At that point, Complainant stated he wanted to object to the public being required to leave the courtroom while the plea was being taken. The Subject Judge then stated:

Why don't you be seated, sir, and I will address you individually afterwards. But to explain to each of you -- since the defendant had entered -- has entered a plea of guilty, and there -- and she had begun -- had she begun to do that and then not fulfilled that plea, that would have affected her rights to a fair and impartial jury. And that was not a matter that needed to be put into the public domain until it was concluded, if it was, in fact, concluded as it has been.

After the jury was excused, the Subject Judge addressed Complainant who noted that his connection with the case was as a spectator. The Subject Judge then stated:

Well, _____, as a spectator, as I have just explained to the jury, if the public had been permitted to participate in the plea proceeding as it was going forward, and then I had refused to accept the defendant's plea, or she had decided in the process of entering it that she wanted to change her mind and not enter a plea, then that matter going into the public domain would

have prejudiced any rights she had under the Constitution to a fair and impartial trial.

After Complainant further explained his objection, the Subject Judge stated, "You're excused. Please leave now." According to the transcript, the proceedings were concluded less than one minute later. The presiding district judge later sentenced the defendant to a term of 60 months of probation with 24 months of home confinement.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge engaged in misconduct when, without good cause, he cleared the courtroom of all members of the public and the media during the guilty plea in the above-described case, "thereby denying members of the public their constitutional right to attend a criminal trial." Complainant then describes the events that occurred on January 31, 2020, and he states that he posed no danger or threat to the court or proceedings and that he was at all times respectful and calm.

Complainant asserts the Subject Judge did not have any cause, much less good cause, to "receive the defendant's plea in a secret session," and that he had no reason to believe the defendant would change her mind about the plea, as the testimony and arguments had all taken place before a different judge. Complainant states he learned after the proceedings concluded that counsel for both parties had objected to the closure of the courtroom. He contends that, if the public had been allowed back in the courtroom before the jury was brought in, Complainant could have voiced his objection before the jury knew the defendant had pleaded guilty, "allowing for the Court the alternative of taking the Defendant's plea again in open court."

Complainant states the case did not involve a juvenile, national security information, or confidential patient information. He contends the Subject Judge's reasoning would lead to "hundreds of plea hearings" across the country being held in secret sessions. He states that a "communication of some kind by this reviewing body to [the Subject Judge] is the only way to possibly inhibit his continuing the practice of unjustifiably removing the public and media from a plea hearing in any criminal case that comes before him." He also states that "[s]ome form of admonishment by this reviewing body to [the Subject Judge] is one of the few practical remedies for his unjustified order." Complainant states a "public and open court is a fundamental principle of our democracy," and that blocking the public from hearing a guilty plea erodes public trust in the judicial system.

Next, Complainant alleges the Subject Judge engaged in misconduct when he, without any justification, barred Complainant from the courtroom after he respectfully

stated his objection to the clearing of the courtroom. Complainant contends he had the right to object, as he was directly impacted by the order closing the courtroom, and he states the Subject Judge “wrongfully ordered” him to leave the courtroom immediately “as some form of punishment for voicing the objection.” Complainant states, “Imagine the ramifications to our legal system if any one who dares lodge an objection in court is then required to remove themselves from any further proceedings.” He also states that the Subject Judge’s “judicial intemperance exhibited by his apparent belief that he can order members of the public and media from his courtroom at will should not be allowed to go uncontested.”

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.

All of Complainant’s allegations concern the substance of the Subject Judge’s decisions to order the courtroom cleared for the taking of the guilty plea and to ask Complainant to leave the courtroom. See Martin v. Automobili Lamborghini Exclusive, Inc., 307 F.3d 1332, 1335 (11th Cir. 2002) (“Courts have the inherent authority to control the proceedings before them . . .”). The allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge