

CONFIDENTIAL

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

JUN 22 2020

**David J. Smith
Clerk**

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

Judicial Complaint No. 11-20-90025

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Magistrate 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 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 February 2019 Complainant filed in a federal district court in _____ a 28 U.S.C. § 2254 petition for writ of habeas corpus. In September 2019 Complainant filed a motion for change of venue, requesting that the case be transferred to the district where he was being confined. A couple of months later, a magistrate judge entered an order construing the § 2254 petition to be against the warden of a state prison where Complainant had been transferred, granting the motion to change venue, and transferring the case to the United States District Court for the _____ District of _____. In January 2020 a district judge issued an order transferring the case to the United States District Court for the _____ District of _____, as that is where the state prison was located.

Later that month, the Subject Judge entered an order transferring the case to the United States District Court for the _____ District of _____, finding that location was the most convenient for witnesses should an evidentiary hearing be necessary. In February 2020 Complainant submitted a letter to the Subject Judge in which he requested judicial intervention in connection with various alleged crimes being committed at his place of incarceration. The Subject Judge entered an order striking the letter because the case was closed and the court lacked jurisdiction to consider the letter. The order also stated that if Complainant wished to raise his constitutional claims in the

court, he would need to initiate a new action and either pay the filing fee or move to proceed in forma pauperis.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge used his judicial office to obtain special treatment for his friends the warden and officers who worked at the state prison where Complainant alleged crimes were occurring. He asserts the Subject Judge had his letter stricken “to destroy its existence and prevent any further viewing of or investigation into the facts contained therein, and held his friends . . . escape from liability and accountability.” Complainant contends the Subject Judge’s conduct “is a breach of fiduciary duty to uphold the laws” and the United States Constitution, an ethical violation, and “misprision of felony to conceal the actions of his friends.”

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 order striking Complainant’s letter, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Apart from the decisions or procedural rulings that Complainant challenges, he provides no credible facts or evidence in support of his claims that the Subject Judge used his judicial office to obtain special treatment for his friends, committed misprision of felony, 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**.

/s/ William H. Pryor Jr.

Chief Judge