

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 30 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90052

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”). The Subject Judge became a district judge in _____.

As an initial matter, after Complainant filed his Complaint, he filed two 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 the Subject Judge, then an 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.” The Subject Judge 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 the Subject Judge acted as the prosecutor in the case. A jury ultimately found Complainant guilty on 18 counts charged in the superseding indictment. In February 2012 the district judge sentenced Complainant to a total term of life

imprisonment. Complainant appealed, and in May 2014 this Court issued an opinion that, among other things, affirmed Complainant's convictions and sentences and, with respect to his argument that the indictments were procured by deception, held that even if his allegations of misconduct were true, the jury verdict rendered any error harmless.

In January 2016 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct 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. After that, the government, through Assistant United States Attorney _____, filed a response, and Complainant filed a reply in which he 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 misled the grand jury into believing he had been involved in crimes against minors. Complainant filed objections to the report and recommendations. In December 2017 the district 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 district court 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 failed to make the requisite showing. Complainant has continued to file documents in the district court. In March 2020 the government filed a "Notice of Reassignment" stating that _____ was no longer assigned to the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge engaged in misconduct and committed fraud as an attorney by lying about Complainant's criminal case on his United States Senate Committee on the Judiciary Questionnaire for Judicial Nominees. He states the Subject Judge: (1) lied about the facts of the indictment and the case; (2) concealed that he unethically and unlawfully suppressed an original August 2011 indictment that listed sexual crimes against child victims and child witnesses; (3) concealed that he committed this unethical conduct by using exemptions in the Child Victims' and Child Witnesses' Rights statute; and (4) failed to advise the United States Senate, the district court, and the court of appeals that he defrauded them and fraudulently entered indictments in Complainant's case.

Complainant states that this Court must issue a subpoena to obtain an August 2011 indictment. He attached two documents to his Complaint, including what appears to be a portion of a Questionnaire for Judicial Nominees where the Subject Judge described his participation as the prosecutor in Complainant's criminal case.

Supplements

After he filed his Complaint, Complainant filed two supplemental statements. In the first, he requests that this Court issue a subpoena to obtain the "suppressed" August 2011 indictment in order to properly investigate the Subject Judge. In the second, he alleges the Subject Judge engaged in fraud with others in Complainant's case, including _____ who Complainant asserts was terminated from his habeas case because of "concerns about her ethical improprieties, a lack of professionalism, and prosecutorial misconduct concerning the indictment" in his criminal case.

Rule 1(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, "A covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363." See also 28 U.S.C. § 351(d)(1) (defining "judge" as "a circuit judge, district judge, bankruptcy judge, or magistrate judge").

All of Complainant's allegations concern the Subject Judge's actions before he became a United States district judge, and, even if Complainant had presented any basis for those allegations, which he has not, they are not cognizable under the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States.

Thus, this Complaint is "not appropriate for consideration under the Act," JCDR 11(c)(1)(G). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(i) and Rule 11(c)(1)(G) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED**. The dismissal of this Complaint in no way implies that the Subject Judge engaged in any misconduct in his capacity as an attorney.

/s/ William H. Pryor Jr.

Chief Judge