

CONFIDENTIAL

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

NOV 18 2020

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint No. 11-20-90067

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former 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 former 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”). The Subject Judge retired as a magistrate judge in _____.

Background

The record shows that in August 1994 a federal grand jury in the United States District Court for the _____ District of _____ indicted Complainant on multiple counts. After that, the acting chief judge entered an order recusing all of the district judges in the _____ District of _____ as to Complainant. A few days later, the Subject Judge issued an order directing that Complainant be detained pretrial.

A district judge from another district then was designated to sit as the presiding district judge in the case. In November 1994 a magistrate judge who is not the Subject Judge issued an order recusing herself from the case, noting that another magistrate judge has been assigned to the case. Also in November 1994, the Subject Judge issued a Writ of Habeas Corpus Ad Prosequendum directing that Complainant be brought before the court for a suppression hearing, and it does not appear that the Subject Judge had any additional participation in the case.

After various proceedings, the case proceeded to trial, and in January 1995 the jury found Complainant guilty on certain counts and not guilty as to one count. Complainant moved for a judgment of acquittal, and in March 1995 the district judge granted the motion, stating that the court would enter a judgment of acquittal or dismissal as to one count. The next month, Complainant was sentenced to a total term of 272

months of imprisonment. On appeal, this Court affirmed. In June 2016 Complainant's sentence was reduced to a total term of 120 months of imprisonment to be followed by 3 years of supervised release.

The record also shows that in December 2017 a criminal complaint was issued charging Complainant with two offenses, and the Subject Judge signed a warrant for Complainant's arrest. Following an initial appearance before the Subject Judge, a federal grand jury issued an indictment charging Complainant and a codefendant with various offenses. It does not appear that the Subject Judge had any additional participation in the case. In June 2019 a district judge sentenced Complainant to a total term of 400 months of imprisonment, and there has been additional subsequent activity in the case.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that the Subject Judge: (1) "directly participated" in Complainant's first criminal case before recusing himself due to a conflict of interest; and (2) later authorized an arrest warrant in Complainant's second criminal case while knowing he was recused from the matter due to a conflict of interest. Complainant states that, by signing the arrest warrant, the Subject Judge, "under the guise of a neutral adjudicator," exhibited extreme bias, violated the district court's recusal and designation orders, flouted the recusal statute and rule requirements, disregarded binding precedent and ethical canons, and deprived Complainant of his due process rights.

Complainant attached an opinion issued by another circuit court, which he states holds that a district judge in Complainant's first criminal case violated his due process rights and statutory requirements by "secretly participating in a separate matter that directly affected a cause he was formally recused from due to an actual conflict." Complainant contends the Subject Judge's misconduct is analogous to that of the district judge involved in the other matter.

Complainant states his allegations do not challenge the merits of the Subject Judge's decision not to recuse because he was already formally recused from the matter. He also states the Subject Judge had an "invested interest" in assuring Complainant's continued incarceration because he was a "lifelong friend and colleague of the reason for conflict in" Complainant's first criminal case. He asserts the Subject Judge's participation in signing the arrest warrant was "vengeful and categorially unlawful."

Complainant attached various documents to his Complaint, including: (1) a November 1994 order issued by a magistrate judge who is not the Subject Judge recusing herself from the first case; and (2) a November 1994 memorandum from the magistrate judge to the clerk of court requesting that no judge from the _____ District of

_____ be assigned to the case because she understood that a magistrate judge from a different district court was going to be assigned.

Discussion

Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States provides, “The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.” With respect to this rule, the “Commentary on Rule 11” states in part, “Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to ‘conclude the proceeding,’ if ‘action on the complaint is no longer necessary because of intervening events,’ such as a resignation from judicial office.”

In light of the Subject Judge’s retirement, “intervening events render some or all of the allegations moot or make remedial action impossible,” JCDR 11(e). For this reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(2) and Rule 11(e) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint proceeding is **CONCLUDED**. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against the Subject Judge.

/s/ William H. Pryor Jr.

Chief Judge