

OCT 30 2020

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

David J. Smith
Clerk

Judicial Complaint No. 11-20-90069

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 2010 a federal grand jury indicted Complainant on one count of possession of a firearm by a convicted felon, and _____ was appointed to represent him. In July 2010 Complainant pleaded guilty to the charge, and in November 2010 a district judge sentenced Complainant to a term of 85 months of imprisonment to be followed by 3 years of supervised release. Complainant appealed, and this Court later affirmed his sentence.

After various proceedings, in October 2018 a Petition for Warrant or Summons for Offender Under Supervision was issued, alleging Complainant had violated the terms of his supervised release by possessing or using a controlled substance. The Subject Judge then appointed _____ to represent Complainant and, after a detention hearing, issued an order directing that Complainant be detained until further order of the court as he failed to established he would not flee or pose a danger to others or the community. The next day, _____ filed a motion seeking a psychiatric or psychological examination of Complainant, stating that, based on information made available to _____ from “US Probation” and Complainant, there was reasonable cause to believe he may be suffering from a mental disease or defect.

On the same day, at the direction of the district judge, a bench warrant was issued for Complainant’s arrest. Complainant then filed a letter in which he took issue with the

appointment of _____. In late October 2018, following a hearing, the Subject Judge entered an order finding there was reasonable cause Complainant may be suffering from a mental disease or defect and committing him to the custody of the United States Attorney General so he could be evaluated by a psychiatrist or psychologist. The next day, the Subject Judge issued an order appointing _____ to represent Complainant.

In December 2018 Complainant submitted a letter requesting the appointment of an attorney, and the next month, the Subject Judge issued an order dismissing the motion as moot, noting that _____ had been appointed in place of _____. In February 2019 a psychiatric report was filed, and Complainant filed a document seeking to have _____ removed from the case. In March 2019, following a competency hearing, the Subject Judge issued an order: (1) finding by a preponderance of evidence that Complainant suffered from a mental disease or defect rendering him incompetent to the extent he was unable to assist properly in his own defense; and (2) directing that he be committed for treatment. After that, Complainant filed multiple motions for the appointment of counsel and to discharge counsel, and he submitted multiple pro se documents that were not accepted because he was represented by counsel.

In September 2019, following a status conference, the Subject Judge entered an order: (1) directing that Complainant remain in custody because it appeared his medical condition had not sufficiently improved; and (2) denying Complainant's motions pertaining to the appointment or discharge of counsel. After that, Complainant filed additional motions to appoint or discharge counsel, motions alleging ineffective assistance of counsel, pro se documents that were not accepted because he was represented by counsel, and a motion for release from custody. In May 2020 the district judge granted the motion for release, entered an order dismissing the Petition for Warrant or Summons for Offender Under Supervision, and entered an order modifying the conditions of Complainant's supervised release.

The next month, a Request for Summons and Modification of Conditions or Term of Supervision was filed, and the district judge entered another order modifying the conditions of Complainant's supervised release. Complainant then filed motions to remove _____ as counsel. Later in June 2020, the Subject Judge issued an order denying Complainant's motions to dismiss his appointed counsel, to appoint substitute counsel, or to proceed pro se, finding he had not shown a conflict of interest, complete breakdown in communication, or other fundamental problem that warranted the removal of counsel. The next month, _____ filed a motion to withdraw as attorney for Complainant, which the Subject Judge granted. Complainant then filed an appeal of the order denying his counsel-related motions, and this Court later dismissed the appeal for lack of jurisdiction.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states the Subject Judge allowed _____ to file a motion for a mental health evaluation, which resulted in him being returned to custody after he had asked that _____ be removed from the case. He contends the Subject Judge granted _____ motion when it was based on false hearsay, and that the Subject Judge failed to ask Complainant if he could assist in his defense when the record showed that he could.

Complainant that states that he notified the court that a United States Marshal had inappropriately touched him, but the Subject Judge attempted to cover up the matter. He complains that the Subject Judge refused to discharge _____, despite her failure to obtain any records for his defense, which constituted an abuse of discretion, caused him to receive ineffective assistance of counsel, and resulted in an improper finding that he was incompetent. Complainant states the Subject Judge failed to consider certain issues, which he feels was meant to deter him from filing lawsuits. He also takes issue with the actions of individuals other than the Subject Judge.

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 case, 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 acted with an illicit or improper motive, attempted to cover up an assault, 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