

OCT 30 2020

David J. Smith
Clerk

CONFIDENTIAL

BEFORE THE CHIEF JUDGE
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-20-90071

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against United States Circuit Judge
_____ of the United States Court of Appeals for the _____ Circuit,
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 Circuit 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 September 2013 in the United States District Court for the _____ District of _____, the _____ (_____) filed an action against two defendants, alleging they violated the Securities Exchange Act. After various filings, the Subject Judge, who was then a district judge, entered an order granting a motion to extend discovery that the _____ had filed. In August 2014 the case was reassigned to a different judge and the Subject Judge was no longer assigned to the case. After that, there were additional proceedings in the case, and the case was closed in October 2015.

The record also shows that in May 2013 a federal grand jury issued an indictment charging Complainant and three codefendants with securities fraud, conspiracy to commit securities and wire fraud, and multiple counts of wire fraud. Following a trial, a jury found Complainant guilty as charged in the indictment, and in June 2014 he was sentenced to a total term of 60 months of imprisonment. Complainant filed a notice of appeal. In October 2015 a panel of this Court that included the Subject Judge, who was then a circuit judge, issued an opinion affirming Complainant’s convictions and sentences. Complainant filed a petition for panel rehearing, which the panel denied.

After that, Complainant filed in the district court, among other things, a motion for a new trial based in part on newly discovered evidence relating to the _____ District of _____ case filed by the _____. In July 2016 the district judge entered an

order denying the motion for a new trial, generally finding Complainant was not entitled to the relief sought, and Complainant appealed. In September 2017 a panel of this Court that included the Subject Judge issued an opinion affirming the denial of Complainant's motion for a new trial, holding in part that Complainant did not show that evidence related to the previous _____ case would likely have made a difference in his trial.

Meanwhile, in March 2017 Complainant filed in the district court a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, generally challenging his convictions. In May 2018 a magistrate judge issued a report recommending that the § 2255 motion be dismissed with prejudice, and the next month, the district judge issued an order adopting the report and recommendation and denying the § 2255 motion. Complainant filed a notice of appeal. In December 2018 a circuit judge who is not the Subject Judge entered an order denying Complainant's construed motion for a certificate of appealability.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant contends the Subject Judge improperly participated in his appeals when she had been the district judge in the _____ materially similar _____ District of _____ case. He states that judges may not hear cases in which they either have personal knowledge of disputed facts, a personal bias concerning a party to the case, or earlier involvement in the case as a judge or in the subject matter of the case, and he alleges the Subject Judge violated multiple provisions of Code of Conduct for United States Judges.

Complainant states he feels his appeals were not given proper consideration or an unbiased review given that the Subject Judge as a circuit judge "made decisions on a related case involving the same security and corporate entities." He states the "influence of [the Subject Judge] by presiding over the [_____] case is unknown to me as it relates to the resulting appeals that materially included one of the last cases [the Subject Judge] presided over at the District Court." He further states that, given some of the rulings in connection with the district court case, it is "hard not to conclude that there was not an influence (intentionally or unintentionally) by the Circuit panel from a Judge who knew that case . . . intimately." He attached documents to his Complaint.

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, orders, and opinions in Complainant’s appeals, the allegations are directly related to the merits of the Subject Judge’s decisions or procedural rulings. Complainant’s remaining claims are based on allegations lacking sufficient evidence to raise an inference that the Subject Judge violated the Code of Conduct for United States Judges 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