

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. 11-20-90081

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”).

Background

The record shows that in August 2011 a federal grand jury indicted Complainant and a codefendant on various charges, and an attorney entered a notice of appearance on behalf of Complainant. The next month, Complainant’s attorney and _____ filed an Amended Motion for Stipulated Substitution of Counsel, seeking to allow _____ to be substituted as Complainant’s attorney of record and stating that Complainant’s family had hired _____ to represent him in the case. In October 2011 the Subject Judge entered an order granting the motion and substituting _____ as counsel for Complainant. The record shows that _____ then filed various documents on Complainant’s behalf, and he is listed on the district court’s docket sheet as counsel appointed under the Criminal Justice Act (CJA).

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, where he was represented by _____ and another attorney. A jury ultimately found Complainant guilty on 18 counts charged in the superseding indictment. In February 2012 the Subject Judge sentenced Complainant to a total term of life imprisonment, and Complainant appealed.

After that, _____ filed a motion to withdraw as counsel and to appoint an appellate attorney, noting he had been retained to represent Complainant in September 2011 and had not been retained for purposes of appeal. In March 2012 the Subject Judge entered an order granting _____ motion to withdraw and appointing a new attorney to represent Complainant on appeal. This Court later issued an opinion that, among other things, affirmed Complainant's convictions and sentences.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge engaged in misconduct by allowing "rogue attorney" _____ to sit first chair at Complainant's trial even though he had not been hired by Complainant or his family. He alleges that ninety-nine percent of the trial was conducted by _____, who was not retained or authorized to practice by Complainant or his family.

Complainant alleges the Subject Judge: (1) engaged in misconduct "by not managing the unlawful appearances of unretained, and rogue attorneys from practicing in his court"; (2) failed to determine whether _____ was retained by Complainant; (3) concealed that _____ had not been retained by Complainant and concealed _____ "unlawful appearance"; (4) "[l]ied] on the official court record" by stating that _____ was appointed under the CJA; (5) knew _____ sought to "sabotage" Complainant's trial and aided _____ in doing so; and (6) "duped" Complainant and his family into believing _____ was a member of the law firm that represented him. He also complains that _____ presented no defense on his behalf, and he states he just discovered this issue because he obtained property that had been seized from him. 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, findings, rulings, and orders in the Complainant's case, 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 acted with an illicit or improper motive, lied, aided counsel in sabotaging Complainant's case, "duped" Complainant or his family, 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