

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

DEC 16 2020

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint Nos. 11-20-90099 through 11-20-90101

IN THE MATTER OF A COMPLAINT FILED BY _____

IN RE: The Complaint of _____ against former United States Circuit Judge _____ and current United States Circuit Judges _____ and _____ 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 former United States Circuit Judge _____ and current United States Circuit Judges _____ and _____ (collectively the “Subject Judges”), 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”). Judge _____ retired as a circuit judge in _____.

Background

The record shows that in January 2008 a federal grand jury issued an indictment charging Complainant with six counts involving multiple crimes. He initially pled guilty to four counts, but the district court later granted his motion to withdraw his plea as to two of the counts. The case proceeded to trial on the remaining counts.

On the second day of trial, Complainant’s counsel objected to certain testimony, arguing that a search of a home violated Complainant’s Fourth Amendment rights. The district court ultimately found that the search was consensual and that there was no basis to find it unlawful under the Fourth Amendment. The docket sheet reflects that Complainant made an oral motion for a mistrial on the same day, which the district judge denied for the reasons stated in open court. At the conclusion of the trial, the jury found Complainant guilty of the four remaining counts. In September 2009 the district court sentenced Complainant to a term of imprisonment, and he filed a notice of appeal.

In July 2010 a panel of this Court composed of the Subject Judges issued an opinion affirming Complainant’s convictions. The panel held, among other things, that Complainant waived his challenge to the district court’s denial of his untimely motion to suppress and that he failed to request relief from the waiver by showing good cause. Therefore, the panel declined to entertain the issue.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that a hearing was held in the district court on his motion for a mistrial, at the end of the hearing the district judge ruled that certain consent was lawfully given, and he preserved the issue on appeal by raising the “very same hearing issue” in his appellate brief. Complainant alleges the Subject Judges declined to entertain the issue, committed a “judicial error,” and “are refusing to right a wrong,” He attached documents to his Complaint.

Discussion

Judge _____

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.”

To the extent the Complaint concerns Judge _____, in light of her 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** to the extent it concerns Judge _____. The conclusion of this proceeding in no way implies that there is any merit to Complainant’s allegations against Judge _____.

Judges _____ and _____

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 Judges _____ and _____, all of Complainant's allegations concern the substance of those judges' opinion in his appeal, and the allegations are directly related to the merits of Judges _____ and _____ decisions or procedural rulings.

Therefore, to the extent the Complaint concerns Judges _____ and _____, the allegations of this Complaint are "directly related to the merits of a decision or procedural ruling," JCDR 11(c)(1)(B). For that reason, pursuant to Chapter 16 of Title 28 U.S.C. § 352(b)(1)(A)(ii) and Rule 11(c)(1)(B) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States, this Complaint is **DISMISSED** to the extent it concerns Judges _____ and _____.

/s/ William H. Pryor Jr.

Chief Judge