

CONFIDENTIAL

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

Judicial Complaint No. 11-20-90168

**FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT**

MAR 10 2021

**David J. Smith
Clerk**

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 January 2020 a federal grand jury issued an indictment charging Complainant with one count each of possession with intent to distribute cocaine base, possession of a firearm in furtherance of a drug-trafficking crime, and possession of a firearm by a convicted felon. In June 2020 Complainant filed a motion to suppress evidence seized during a search of a certain location, generally arguing the search violated the Fourth Amendment.

After a suppression hearing, the Subject Judge issued a report recommending that the motion to suppress be denied, finding Complainant did not have standing to contest the search at issue and, in any event, the officers’ protective sweep of the location was justified and they lawfully discovered evidence in plain view during the sweep. Over Complainant’s objections, a district judge entered an order adopting the Subject Judge’s report and recommendation and denying the motion to suppress. Complainant appealed the order, but later voluntarily dismissed the appeal. In November 2020 a superseding indictment was issued charging Complainant with the same offenses.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge is biased and prejudiced because he has “family and political ties to his father” who is a state court judge and “knows about the details of [his] case and the

police who charged [him]" in a state court case from 2014 that was dismissed. Complainant states "[t]hey [are] all friends and colleagues" from the same city. He asserts he will not be able to have a fair trial because the Subject Judge has a personal vendetta against him due to his past convictions and acquittals in state court. 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, report, and recommendations in the 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 was biased or prejudiced, had a conflict of interest, had a personal vendetta against Complainant, 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