

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

APR 15 2021

David J. Smith
Clerk

CONFIDENTIAL

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

Judicial Complaint No. 11-21-90011

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 2002 a federal grand jury issued an indictment charging _____ and another defendant with multiple crimes, and in July 2003 the case was reassigned to the Subject Judge as the presiding district judge. In November 2003 a superseding indictment was issued charging _____ with additional crimes.

The case proceeded to trial, and a jury found _____ guilty on certain counts. In May 2004 the Subject Judge sentenced _____ to a total term of 1,620 months of imprisonment. _____ appealed, and this Court later issued an opinion noting he was the “_____” and affirming his convictions and sentences.

Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant states that in 1998 the Subject Judge was an attorney representing defendants in a certain lawsuit brought by plaintiffs who were known as “_____,” and that he later was the presiding district judge in the above-described criminal case where _____ was identified as the “_____.” Complainant alleges the Subject Judge’s participation in both cases resulted in a conflict of interest, called his impartiality into question, and suggested he may be biased against _____. Finally, Complainant contends the Subject Judge should have recused himself from the criminal case.

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 Mr. York’s criminal case, including the allegation of failure to recuse, 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 had a conflict of interest, was not impartial, was biased, 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