

CONFIDENTIAL

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

JUN 09 2021

David J. Smith  
Clerk

BEFORE THE CHIEF JUDGE  
OF THE ELEVENTH JUDICIAL CIRCUIT

Judicial Complaint No. 11-21-90029

IN THE MATTER OF A COMPLAINT FILED BY \_\_\_\_\_

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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.

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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 July 2013 a federal grand jury issued an indictment charging Complainant with two crimes, and he later pled guilty to one count of the indictment. In January 2014 the Subject Judge sentenced him to 360 months of imprisonment. On appeal, this Court affirmed Complainant’s sentence.

In July 2016 Complainant filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, raising multiple claims of ineffective assistance of counsel. After various proceedings, a magistrate judge issued a report recommending that the § 2255 motion be denied, generally finding Complainant did not establish he was entitled to the relief sought. In April 2017 the Subject Judge entered an order adopting the report and recommendation with certain exceptions and denying the § 2255 motion.

In August 2020 Complainant filed in his criminal case a motion for compassionate release and for a sentence reduction, and in February 2021 the Subject Judge issued an order denying the motion, finding Complainant failed to exhaust his administrative remedies.

The record also shows that in March 2021 Complainant filed in the district court a *pro se* petition for writ of mandamus or prohibition in which he generally alleged he was being denied access to the court. A district judge then entered an order transferring the

case to the Subject Judge because it was related to Complainant's criminal and habeas cases. After that, the Subject Judge entered an order transferring the case to the district in \_\_\_\_\_ where Complainant's institution was located, finding a substantial part of the events or omissions giving rise to the claim occurring there.

### Complaint

In his Complaint of Judicial Misconduct or Disability, Complainant alleges the Subject Judge: (1) abused his power; (2) discriminated against "black male Cubans in favor of females"; (3) never intended to abide by his oath of office due to his "allegiance" to a certain entity that sponsored him to become a judge and to become the \_\_\_\_\_; (4) takes actions not supported by precedent; (5) forces *pro se* litigants to file appeals they cannot win; (6) is "pro-government" and seeks to protect government officials by abusing the Prison Litigation Reform Act; (7) has "shown a willingness to protect" government personnel and other "bad actors" using a "cherry-picking program" he developed; and (8) became a judge under "false pretenses."

Next, Complainant alleges the Subject Judge exhibited a "hostile demeanor towards" him by making sure he was kept in "full metal security restraints" each time he was taken to court in order to coerce him to plead guilty. He contends the Subject Judge "automatically took a negative approach" to his motion for compassionate release and dismissed the motion without giving him "an opportunity for a due process notice of intent." Complainant asserts the Subject Judge ignored that he cannot speak English and that prison guards have a "particular animosity toward Cuban males behind the Cuban prisoner riots."

Complainant asserts the Subject Judge "refused to entertain" his petition for writ of mandamus, and transferred the petition to another court without providing notice, which prevented him from raising a defense as to the Subject Judge's "unethical activities." He also alleges another district judge had transferred the petition to the Subject Judge after admonishing him for his "lack of candor."

### 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 above-described cases, 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 discriminated against Complainant or others, violated his oath of office, had a conflict of interest, was biased against *pro se* litigants or in favor of the government; treated Complainant in a demonstrably egregious or hostile manner; 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