

MAY 04 2022

David J. Smith
Clerk

CONFIDENTIAL

Before the Chief Judge of the
Eleventh Judicial Circuit

Judicial Complaint No. 11-22-90036

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, 28 U.S.C. §§ 351-364.

ORDER

_____ (“Complainant”) has filed this Complaint against
United States District Judge _____ (“the Subject Judge”), un-
der the Act, 28 U.S.C. § 351(a), and the Rules for Judicial-Conduct
and Judicial-Disability Proceedings of the Judicial Conference of
the United States (“Judicial-Conduct Rules”).

Background

The record shows that in April 2021 a federal grand jury issued an indictment charging Complainant, along with a codefendant, on one count of tampering with a witness, victim, or informant. A magistrate judge appointed counsel to represent Complainant. In July 2021 the grand jury issued a superseding indictment charging Complainant with the same offense. After that, Complainant's attorney was permitted to withdraw from the case, and another attorney was appointed to represent him.

The case then proceeded to trial before the Subject Judge, and in October 2021 the jury found Complainant guilty as charged in the superseding indictment. After that, Complainant's attorney moved to withdraw, and the Subject Judge granted the motion and appointed a new attorney to represent him. Complainant has not yet been sentenced.

Complaint

Complainant first states that "aiding and abetting was not charged in the indictment and the jury was not charged on this theory," and he asserts the Subject Judge instructed the jury that the government "d[id] not need evidence to find the defendant guilty" of tampering with a witness. He states the Subject Judge "stated that she [had] seen several illegal issues in my case but she fails to address them." He also complains about the representation rendered by his appointed attorneys, stating he has "suffered harm because of the attorneys" and that the Subject Judge stated she had

known one of his attorneys for over 30 years. Finally, he states the Subject Judge “failed to uphold justice in a real concrete way,” which caused him harm and put him in danger.

Discussion

Judicial-Conduct Rule 4(b)(1) 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 explains the rationale for this rule as follows:

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 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 had a conflict of interest or otherwise engaged in misconduct.

The allegations of this Complaint are “directly related to the merits of a decision or procedural ruling,” under Judicial-Conduct Rule 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,” under Judicial-Conduct Rule 11(c)(1)(D). For those reasons, this Complaint is **DISMISSED**.

/s/ William H. Pryor Jr.
Chief Judge