JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 483
(# 01-08-90006)

BEFORE
Boudin, Chief Circuit Judge

ORDER
ENTERED: MAY 30, 2008

On March 17, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a bankruptcy judge in the First Circuit. The complainant charges that the judge has engaged in wrongdoing in connection with the complainant's two bankruptcy petitions.[1]

The complainant alleges that the judge is "corrupt" in that he "just rubber-stamps whatever the trustee and lawyers put before him." The complainant contends that the judge improperly accepted the perjured testimony of an unidentified "lawyer" who had failed to provide the "critical evidence" (that "no money [had been] put down as a deposit [in connection with the 1998 agreement to sell the complainant's property]"). The complainant next asserts that the judge improperly dismissed the complainant's lawyer only one month after he had been retained, and then ignored

---

[1]The complainant filed one of the petitions in a corporate capacity and the other in an individual capacity.

"solid evidence . . . on a CD" of this attorney's "malfeasance." The complainant implies that the judge is responsible for the improper redesignation of his cases as Chapter 7 proceedings, as opposed to the Chapter 11 petitions that he had filed.

As an initial matter, the complainant includes numerous allegations of impropriety against town officials, multiple attorneys, the U. S. trustee, and other parties--none of which are appropriate for consideration under the judicial misconduct statute.[2] See 28 U.S.C. § 351, et. seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 4.

A review of the complaint, the dockets and the court's orders indicates that, through counsel, the complainant filed both petitions in late 2005. (One of the cases was originally assigned to another judge but was promptly transferred to judge charged in the present matter.) In March 2006, the judge authorized the employment of counsel on behalf of the complainant in both of the cases. In April 2006,the judge granted the trustee's motion to convert both proceedings from Chapter 11 to Chapter 7.

The complainant subsequently filed a notice of appeal to the BAP contending that his attorney had wrongfully authorized the sale of the complainant's property. The complainant then filed several motions pro se and, in May 2006, his counsel sought leave to withdraw. The court held a hearing on the outstanding motions after which it allowed counsel's motion to withdraw, denied several of the complainant's pro se motions to dismiss the claims of other creditors, and extended the time for the trustee to evaluate the contract providing for the sale of the complainant's property.

---

[2]The complainant charges that town officials improperly withheld issuance of building permits for the complainant's highly valued property, that a development company wrongfully "held the land in a stranglehold for over a decade," that his divorce lawyers are responsible for his bankruptcy, and that the trustee improperly undersold certain pieces of the complainant's property, although the complainant had no creditors and did not owe his ex-wife any money.

After another hearing in August 2006, the judge ordered payment of the complainant's counsel fees and denied the complainant's motion to dismiss the case. The following month, the court reiterated its denial of the complainant's request to dismiss the proceedings, explaining that the complainant had provided no grounds for revisiting the court's earlier decision.

In November 2006, the trustee filed a motion requesting authorization to sell the complainant's property, to which the complainant objected. In his objection, the complainant contended that his attorneys knew that there was never a valid purchase and sale agreement on the property because no deposit had been accepted but that they had, nevertheless, improperly failed to provide this information to the state appeals court responsible for the complainant's previous litigation. The complainant apparently included with his objection a CD of the oral argument in state court and concludes that "this is a clear case of collusion and malfeasance [by his attorneys]."

After a hearing on the trustee's motion to sell the property, the judge issued a lengthy memorandum summarizing the history of the complainant's litigation in state court (in which he was sued for alleged failure to convey title to his property in accordance with the purchase agreement), and making detailed findings and orders effectuating the sale and transfer of the complainant's property. The complainant subsequently filed another motion to dismiss in which he argued that the trustee had misled the court concerning the complainant's acquiescence to the proposed sale. The court denied this motion, as well.

In May 2007, the judge again denied the complainant's request for reconsideration of the court's orders, noting that the request was "repetitive of previous requests by the [complainant], all

of which have been denied."[3] Finally, in December 2007, the complainant sought the recusal of the judge, claiming that he had conspired with counsel and misapplied the law. The court denied this motion, as well. The complainant's multiple appeals have to-date been unsuccessful.

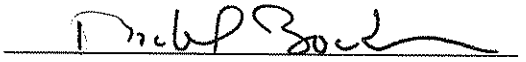
The reviewed record--including the docket, pleadings and court orders issued in both of the complainant's cases--provide no factual corroboration for the charges that the judge was biased against the complainant or colluded with counsel or with the trustee in an attempt to undermine the complainant's rights. In essence, it appears that the complainant is seeking to relitigate the validity of the agreement to sell his property, an issue that was resolved in state court. After reviewing this litigation in detail, the judge found that the sale of the property to the creditor in question was "in the best interests of the Debtor's Bankruptcy estate and should be approved . . . ." The complainant presents no information supporting the claim that the judge wrongfully ignored relevant evidence (concerning the behavior of counsel or any other issue), or wrongfully acceded to the claims of the trustee or counsel. Accordingly, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, Rule 11(c)(1)(D).

As there is no evidence of improper judicial motivation, insofar as the complaint reflects the complainant's disagreement with rulings entered by the court--including the redesignation of the cases from Chapter 11 to Chapter 7, or the order allowing counsel's motion to withdraw--it is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B). Finally, I note that, on the present facts, the judge's denial of the complainant's motion for recusal does not suggest judicial misconduct within the meaning of the statute. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

---

[3]Meanwhile, in March 2007, the judge had ordered the consolidation of the complainant's two proceedings.

For the reasons stated, Judicial Misconduct Complaint No. 483 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(B); 352(b)(1)(A)(i); and 352(b)(1)(A)(ii).



Chief Judge Boudin