

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90011

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: JULY 17, 2008

On May 12, 2008, complainant, a litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The complainant alleges that the judge engaged in fraud, bias and other wrongdoing in the course of that judge's rulings on various matters. While the complainant has been a party to nine (9) cases in the district since 1997, six of which have been handled by the judge charged in the present matter, the complainant's allegations appear to center primarily on two of these cases--his 1997 criminal prosecution, and a petition for habeas corpus that the complainant filed in 2003.

The complainant first states that, in June 2003, he filed a memorandum (in support of a § 2255 motion) in which he made numerous "extremely insulting statements" to the judge. The complainant alleges that, in retaliation for these remarks, in May 2006, the judge issued an injunction prohibiting the complainant from filing further pleadings without leave of court. The complainant infers that the issuance of this injunction demonstrates the judge's bias against him and constitutes "conduct prejudicial to the effective and expeditious administration of the business of the [c]ourts

...."

The complainant next charges that the judge has improperly ignored two motions, filed pursuant to Fed.R.Civ.P. 60, in September 2007 and January 2008, respectively. The complainant continues that, by ignoring these motions, the judge has failed to recognize the complainant's "irrefutable independent corroboration" that he has been to date "unconstitutionally incarcerated [for] 7 years over his term"

The charge of unlawful imprisonment emanates from another of the complainant's claims-- that the judge improperly allowed the reintroduction of a dismissed count for cocaine conspiracy ("dismissed Count 30") "disguised" as another charge. The complainant states that, on the first day of trial, the judge allowed the government's motion to dismiss Count 30 but then wrongfully allowed the reintroduction of this charge as part of the RICO indictments (Counts One and Two) in violation of the Double Jeopardy Clause of the Fifth Amendment. The complainant concludes that, as a result, he was sentenced to an "extra 30 years . . . in prison."

Finally, the complainant alleges that the judge improperly failed to declare a mistrial when he learned of "derogatory statements" made by a juror. The complainant supplies documentation from his criminal case, including, but not limited to, the indictment, segments of several court orders, pleadings and correspondence, as well as the verdict, disposition and judgment. (The complainant also includes docket sheets from two petitions for habeas corpus that the complainant filed last year in another circuit, both of which were transferred to the district court in which the complainant had been prosecuted.)

A review of the relevant dockets, pleadings, and court orders indicates that the complainant was one of numerous defendants charged in April 1997 with multiple drug, firearms and conspiracy

charges. As alleged, the government moved to dismiss Count 30 (narcotics trafficking conspiracy) on the first day of trial. The court allowed this motion. After a lengthy jury trial, the jury returned a partial verdict, in January 1999, acquitting the complainant on two counts (4 and 31), and the judge issued a mistrial on the remaining counts.

After the filing of numerous motions by both parties and further discovery, the court held another jury trial, beginning in October 1999, on the outstanding counts. In December 1999, the jury found the complainant guilty on Counts 1, 2, and 3. In April 2000, the complainant was sentenced to 420 months. The Court of Appeals affirmed the judgments of the district court.

Beginning in January 2003, the complainant started to file multiple motions pro se, including a motion for a new trial, a motion to recuse the judge, and a motion to vacate under 28 U.S.C. § 2255, in June 2003. (The complainant had previously been represented by counsel.) The motion to vacate is the habeas petition to which the complainant refers in his materials. In January 2007, the judge denied the majority of the complainant's 20 outstanding motions then pending in the criminal matter.

As indicated in the complaint, the complainant thereafter filed a motion for relief from judgment pursuant to Fed.R.Civ.P. 60(b), in September 2007, and a related motion, in January 2008. Contrary to the complainant's charges, these motions were not "ignored," but were decided by the court in January 2008.

Meanwhile, in the habeas matter, the judge ordered the submission of a responsive pleading, and the complainant filed numerous motions resulting in the issuance of the court's order, in May 2006, to which the complainant objects. This 20-page order recounted the chronology of the criminal proceeding, defined the applicable legal standard(s) for obtaining habeas relief, and

analyzed the complainant's claims. The judge reasoned that the complainant's charges of ineffective assistance of counsel and governmental misconduct were inadequate under the law and that the remainder of the complainant's claims had been previously addressed on appeal. Because the complainant included numerous arguments which the court deemed to be frivolous "attacks upon the legitimacy of [the complainant's] conviction," and had filed a multitude of lengthy motions which the court found to be "duplicative, incoherent and wholly devoid of meritorious argument," the judge enjoined the complainant from filing additional pleadings without first obtaining prior written approval of the court. The Court of Appeals affirmed the district court's subsequent denial of the complainant's motion for a certificate of appealability.

The reviewed record of the complainant's lengthy criminal proceeding and the related habeas petition provides no facts indicating that the judge harbored any bias or improper motive in presiding over the complainant's cases. Nor does the complainant provide any grounds for the unfounded conclusion that the court's order of May 2006 (limiting the complainant's right to file further pleadings) was issued "in retaliation" for alleged insults the complainant levied against the judge. To the contrary, the uncontroverted record supports the judge's reasoning--that the order was prompted by the number of meritless submissions that the complainant had filed to date. As they were decided by the court, the complainant's related charge that the judge improperly ignored motions filed by the complainant, in September 2007 and January 2008, respectively, is equally unsupported.¹ Accordingly, the claims of bias, retaliation, and neglect are dismissed as baseless pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and Rules for Judicial-Conduct and Judicial-Disability

¹In any event, the failure to resolve all pending motions would not, on the present facts, be remotely suggestive of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(A).

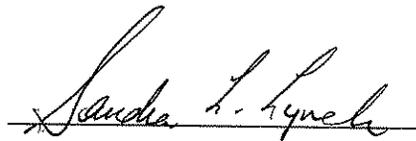
Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C).

The complainant's remaining allegations derive directly and exclusively from the complainant's dissatisfaction with orders issued by the court--including, but not limited to, the dismissal of Count 30, the convictions on the remaining counts, the sentence imposed, the denial of post-trial motions relating to the juror's alleged remarks, and the dismissal of the habeas petition. "[A]llegation[s] that call . . . into question the correctness of a judge's ruling, . . . without more, [are] merits-related" and, as such, are "not cognizable . . ." Rules of Judicial Misconduct, Rule 3(h)(3)(A). Accordingly, the complaint should also be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90011 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

7/17/08

Date



Chief Judge Lynch