

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-08-90030

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER  
ENTERED: NOVEMBER 10, 2008

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On August 12, 2008, complainant, a pro se 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 has engaged in misconduct while presiding over the complainant's two civil cases. The complainant originally alleged that the judge has exhibited bias by improperly delaying ruling on matters before the court, neglecting to adequately read and consider the pleadings, and issuing erroneous rulings.

The complainant initially focuses on the judge's handling of his first case against state court judges. Complainant alleges the judge "obstructed justice [in order] to protect his 'brother' judges from being held accountable for their misconduct." The complainant asserts that, in order to protect the defendants, the judge took no action in the case for the first 22 months it was filed, ignoring both "opposing counsel's meritless motion to dismiss" and the complainant's two motions for an expedited trial. The complainant similarly contends that the judge improperly delayed ruling on the defendants' motion to dismiss filed in the complainant's other case, which he had filed against his

former employer.

The complainant next alleges that the judge neglected to read the pleadings in the first case, an evidenced by a delay of months in allowing the complainant's motion for a ten-day extension of time. The complainant adds that, if the judge had read the complainant's submissions, he would have been "well aware" that the defendants' motion to dismiss is meritless and that the defendant judges are "guilty of the crimes of which they have been accused." The complainant alleges, from this, that the judge has handled the case so as to "obstruct justice and deny [the complainant] his right to have [the] case heard before a jury. . . ."

After the submission of his original complaint, the complainant filed supplementary materials alleging that the complained-of judge had retaliated against him for the filing of the misconduct complaint by dismissing both of his cases six weeks after the misconduct complaint was filed. Stating that the judge should have recused himself upon the filing of the misconduct complaint, the complainant submitted copies of his memoranda requesting the court's reconsideration of its orders of dismissal. The complainant concludes that the judge has violated Canons 1, 2 and 3 of the Code of Conduct for United States Judges by failing to enforce "high standards of conduct, . . . carry out [his] responsibilities with integrity [and] impartiality, [and] dispose promptly of the business of the court."

The reviewed record--consisting of the misconduct complaint, the dockets of the cases at issue, and the relevant pleadings and court orders--does not support the complainant's charges. The docket indicates that the complainant filed his first case in the fall of 2006. In November of 2006, the defendants filed a motion to dismiss and the complainant filed an opposing memorandum. Early the following month, the judge scheduled a conference for January 2007. At this conference, the

court ordered the defendants to produce copies of the relevant state court documents and took the defendants' motion to dismiss under advisement.

The defendants complied with the court's order and, in early 2007, the complainant filed the motion cited in his complaint requesting a ten-day extension in which to file a legal memorandum. Several months later, the complainant filed a letter inquiring into the status of the case, and, in the fall of 2007, the judge issued an electronic order allowing the complainant's motion for more time.

In November 2007, the complainant filed a motion to expedite the trial in the first case and filed the other case alleging that he had been unlawfully discharged from his employment. In early 2008, the defendants filed motions to dismiss this proceeding, to which the complainant filed oppositions. The court then scheduled a conference in both cases for March 2008. At this conference, the court ordered the parties to file a report on the first case, stayed discovery in the employment case and set another conference for May. At this hearing, the judge denied the complainant's motion to amend the complaint in the first case, ordered briefs be filed in the employment case and took remaining matters under advisement.

In the summer of 2008, the parties filed additional miscellaneous motions and memoranda in both cases, including motions to dismiss, expedite the trial, amend the complaint and for extensions of time. In the fall, the judge issued lengthy orders dismissing both cases. As to the first case, the court summarized the lengthy chronology of the complainant's state court proceedings. After an extensive analysis of the guiding legal principles, the judge determined that the Rooker-Feldman doctrine limited the court's jurisdiction to review the complainant's challenges, that the claims for monetary damages were barred by judicial immunity, and that the abstention doctrine prevented the court from awarding equitable relief.

In the order issued in the other case, the judge recounted in detail the chronology of the complainant's employment dispute and its relation to the custody issues. See note 1, *supra*. After an analysis of the applicable legal guidelines, the court determined that the complainant had failed to state a valid constitutional claim against the defendants and that it would not exercise supplemental jurisdiction over the remaining state claims. This opinion--of over 30 pages--addressed each of the complainant's claims in detail before allowing the defendants' motions to dismiss. The complainant then filed motions for reconsideration of the court's orders of dismissal, both of which were summarily denied.

The records do not support any claim that the judge harbored any improper motivation in his review of the complainant's proceedings. The complainant's dissatisfaction with the duration of the cases<sup>1</sup> and with the substance of the court's orders does not provide a basis for the misconduct claims. The charges are thoroughly belied by the court's detailed orders of dismissal--both of which demonstrate careful attention to the proffered pleadings and guiding law, despite arriving at legal conclusions to which the complainant objects. Further, the court did not, as alleged, "ignore" the complainant's motions for an expedited trial. These motions were terminated by the court in conjunction with the order of dismissal. As the complaint and the reviewed record provide no evidence of bias, neglect or improper motive, the complaint is dismissed pursuant to 28 U.S.C. §

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<sup>1</sup>During the two-year pendency of the first case, the court held multiple hearings and issued numerous rulings before issuing a thorough memorandum and order of dismissal. The fact that there were several months during which the judge took little action is insignificant. Cases often have periods of greater and lesser activity that reflect many factors, including the level of priority that a judge assigns to a particular case at any given time. See Rules of Judicial Misconduct, Commentary on Rule 3. The court's management of these proceedings was neither out of the ordinary nor remotely indicative of wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i). See also Boudin, C.C.J., *In Re* Complaints No. 375 and No. 378, April 28, 2004, at 3. (Five-month delay in ruling on motion for a temporary restraining order does not alone demonstrate misconduct.)

352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(D).

Insofar as the complainant disputes the substance of the courts' orders of dismissal, the complaint is directly related to the merits and, as such, is not cognizable. Accordingly, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Insofar as the complainant asserts that the judge committed misconduct in failing to sua sponte withdraw from the cases upon the filing of the misconduct complaint, neither the judicial misconduct statute nor the governing rules require the recusal of a presiding judge upon the filing of a misconduct complaint against the judge. As the complainant presents no independent grounds for recusal, the judge's failure to do so is not remotely indicative of wrongdoing.

The facts do not establish a violation of the Code of Conduct for United States Judges, much less of the judicial misconduct statute. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90030 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

11/10/08  
Date

Stephen L. Lynch  
Chief Judge Lynch