

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90031

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: NOVEMBER 26, 2008

On September 3, 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 has engaged in misconduct while presiding over a criminal prosecution filed against him and a related civil matter filed in rem to obtain the forfeiture of the complainant's property.

The complainant essentially alleges that, in accepting the complainant's change of plea and ordering the forfeiture of the complainant's property, the judge contravened his verbal commitment to protect the interests of the complainant's minor children. The complainant further contends that the judge wrongly accepted the complainant's guilty plea, although the judge had been repeatedly informed by means of "exhibits, letters, affidavits and testimony" that the plea had been coerced by the government. The complainant provides several alleged transcript excerpts that allegedly demonstrate the judge's "slanted take on matters." The complainant argues that the court's denial of a motion that the complainant filed pro se, in January, 2008, to reclaim the property evidences the judge's wrongdoing. The complainant concludes that the judge's "willful blindness and dereliction

progressed into a string of consecutive nonfeasances and malfeasances" and "blossomed" into conspiracy to conceal the government's crimes against the complainant and his family.

The reviewed record--consisting of the misconduct complaint, the dockets of the complainant's cases, and the relevant pleadings and court orders--fails to support the complainant's charges. The record indicates that, while the complainant had originally plead not guilty, the parties filed a change of plea that was accepted by the court in 2003. After sentencing, the complainant appealed the conviction, the sentence and several orders of forfeiture that the court issued in 2003 and 2004.

In 2005, the Court of Appeals issued judgment affirming the complainant's conviction, as well as the sentence and forfeiture orders issued by the district court. Thereafter, the district court continued to preside over the government's further requests for the forfeiture of the complainant's property and the complainant continued to appeal the court's orders. None of his appeals to date have been successful.

In January of 2008, the complainant filed the motion that he included with his complaint. The judge denied this motion and noted that the "property at issue was forfeited as part of the plea agreement; the children have no claim to it and asserted no timely claims at any rate. Any further consideration of these issues must be by the First Circuit."

The reviewed record demonstrates that the complainant's allegations are based exclusively on his disagreement with the orders issued in the case. The complainant provides no information suggesting that the judge exhibited bias or animus in connection with any of the court's orders, including, but not limited to, those regarding the change of plea, sentencing, or the forfeiture of the complainant's property. Absent evidence of bias--of which there is none--the complainant's

disagreement with the court's orders may have presented a proper subject for appeal, but not for a complaint of judicial misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related."). Accordingly, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

As there is no evidence that the judge conspired with the government to subvert the complainant's exercise of his civil rights, or engaged in any other wrongdoing, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). Finally, the purported quotations from hearing transcripts that the complainant includes do not, as alleged, demonstrate that the judge lacked partiality. Accordingly, the allegations arising from these statements are dismissed as not suggestive of misconduct. 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. 01-08-90031 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

11/26/08

Date

Sandra L. Lynch

Chief Judge Lynch