

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90035

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: DECEMBER 18, 2008

On September 22, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a chief district judge in the First Circuit.¹ The complainant alleges that the district court does not provide prisoners with forms on which to file civil rights actions under 42 U.S.C. § 1983, United States Department of Justice Forms 285 (USM-285), for documenting proper service of process, or hard copies of the court's local rules of civil procedure. The complainant infers that these omissions demonstrate "conduct prejudicial to the effective and expeditious administration of the business of the courts" by the chief judge.

This misconduct complaint is the fourth filed by the complainant. The complainant filed Complaint No. 469, on July 18, 2007, and Complaint No. 478, on December 11, 2007, both against the same district judge for alleged misconduct in connection with the complainant's multiple civil

¹The complainant states that the complaint is directed against the chief district judge and "all of the judges and magistrates of the [court]" but, because only the chief judge has been properly identified, the complaint has been accepted only against him. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 6.

proceedings. Then Chief Judge Boudin dismissed Complaint No. 469, on September 19, 2007, and Complaint No. 478 on February 20, 2008. See Boudin, C.C.J., Order, In re: Complaint No. 469, September 19, 2007, and Boudin, C.C.J., Order, In re: Complaint No. 478, February 20, 2008. The Judicial Council dismissed the petition for review that the complainant filed in connection with Complaint No. 478, on August 13, 2008.² See Judicial Council of the First Circuit, Order, In re: Complaint No. 478, August 13, 2008.

The complainant filed his third complaint, No. 01-08-90029, against the same district judge charged in his first two complaints, on August 11, 2008, alleging further misconduct in the complainant's civil cases. I dismissed this complaint, on October 28, 2008, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See Lynch, C.C.J., Order, In re: Complaint No. 01-08-90029, October 28, 2008. Because of the complainant's history of filing frivolous misconduct complaints, I also issued an order to show cause, on behalf of the Judicial Council. After the complainant to respond the Judicial Council issued an order precluding the complainant from filing any new judicial misconduct complaints without permission of the Judicial Council. See Judicial Council of the First Circuit, Order, No. 01-08-90029, December 9, 2008. This order did not apply to the present complaint which the complainant had filed on September 22, 2008.

In the pending matter, the complainant asserts that the absence of forms for prisoner civil rights cases deprives litigants of access to "what types of facts should be stated" in their civil complaints. As a result, the complainant contends that prisoners file civil complaints that are overly broad, that precipitate "purposeful dissatisfaction" by the presiding judges, and result in dismissal for failure to comply with required pleadings requirements. The complainant continues that, while

²The complainant did not file a petition for review in connection with Complaint No. 469.

these orders of dismissal are issued without prejudice, the burden and expense of refiling force the litigants to abandon their otherwise successful case(s).

As to the USM-285 forms, the complainant charges that the presiding judges are "purposefully sending prisoners" these forms with carbon paper that is then confiscated by the prisons, thereby impeding the prisoners' ability to complete service of process. Lastly, the complainant asserts that the court should provide hard copies of its local rules.

The misconduct complaint is without merit. No facts or evidence are offered in support of any charges of wrongdoing by the chief district judge. The complainant's claim is simply wrong that the chief district judge is automatically vicariously responsible for alleged administrative errors or omissions that have transpired in his court, or that such administrative processes amount to misconduct. Such allegations do not, absent evidence of personal bias or wrongdoing by the charged judge, of which there is none, constitute cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h). See also Lynch, C.C.J., Order, In re: Complaint No. 01-08-90015, August 18, 2008, at 2, citing Boudin, C.C.J., In re: Complaint No. 368, March 8, 2004 (Alleged procedural error in the distribution of subpoenas does not indicate misconduct by the chief district judge.).

The complaint is dismissed as unfounded pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C). Because the court's administrative procedures--with regard to access to particular forms and local rules--do not demonstrate wrongdoing by the chief district judge, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). The complainant's allegations have been brought to the attention of the district court. As to the complainant's claim about access to the

USM-285, that form, previously available only in hard copy, has been uploaded onto the court's website where it is now also available. While the court does not issue hard copies of its local rules (and, like many other courts, has not done so for a number of years), it does provide "Step by Step," a "Simple Guide to filing a Civil Action," which is widely available in both hard copy and on-line, and delineates many of the pleading requirements contained in both the federal and local rules of procedure.

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90035 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii).

12/18/08
Date

Sandra L. Lynch
Chief Judge Lynch