

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NO. 01-08-90036 – No. 01-08-90096

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JANUARY 22, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against all court of appeals and district judges, as well as against a number of magistrate judges, in the First Circuit. The Judicial Council voted “in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.” Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 25(f). See also Rules of Judicial Misconduct, Commentary on Rule 25 (“In recognition that these multi-judge complaints are virtually always meritless, the judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in the interest of sound judicial administration, to permit the chief judge to dispose of a complaint where it would otherwise be impossible for any active circuit judge in the circuit to act . . .”).

The complainant alleges that the courts have mishandled his and others' habeas petitions by failing to comply with 28 U.S.C. §§ 2241 and 2243. The complainant charges that his habeas

proceeding was wrongfully dismissed by the Court of Appeals (as an improper collateral attack on his conviction) because, since he represented all detainees in the circuit, he was entitled to file the matter with "any circuit judge." The complainant also alleges that the filing of his habeas petition obligated every judge in the circuit to raise, sua sponte, jurisdictional defects "in every criminal case, pending and past." The issue presented, according to the complainant, is the "invalidity of the courts' general criminal jurisdiction."

The complaint is baseless. Judicial misconduct proceedings are intended "to determine whether a covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability." Rules of Judicial Misconduct, Rule 1. The complainant provides no facts indicating that any judge has engaged in cognizable misconduct.

Further, a judicial misconduct complaint is not the appropriate avenue for asserting these claims. See Boudin, C.C..J., Order, In re: Complaint No. 447, April 2, 2007 (Constitutional challenge to statute designating federal judicial districts is not appropriate for consideration under the judicial misconduct statute.) As the complaint does not suggest conduct that would, if true, constitute judicial misconduct, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

As the complainant presents no evidence of judicial bias or wrongdoing, to the extent that the charges derive from the complainant's dissatisfaction with the order of dismissal entered in his proceeding, the complaint is also dismissed as not cognizable pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaints No. 01-08-90036 – No. 01-08-

90096 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(ii).

1/22/09
Date

Sandra Lynch
Chief Judge Lynch