

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-09-90008, 01-09-90009, 01-09-90010 and 01-09-90011

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 5, 2009

Complainant, a litigant, filed four complaints of judicial misconduct under 28 U.S.C. § 351(a) against four First Circuit judges. Two complaints were filed against district judges, and two were filed against magistrate judges. The complainant alleges misconduct in connection with a criminal prosecution against him, as well as in connection with another related criminal matter. The complainant also filed two civil proceedings related to his criminal case that are referenced in his complaints. Because these complaints arise from several related matters, they are addressed concurrently.

As to District Judge No. 1, see Complaint No. 01-08-90008, the complainant alleges that his criminal trial, over which this judge presided, "created a double jeopardy count" that caused the complainant to be "convicted of crimes, not in effect yet." The complainant concludes that the judge "should have known the law" regarding the crimes charged and sentence imposed.

The complainant next contends that he was wrongly implicated by local police in a violent crime that had occurred many years earlier. Finally, the complainant alleges that this district judge

"blindsided [sic]" the complainant in his 28 U.S.C. § 2255 case by improperly denying the petition before the complainant could file an opposition to the magistrate judge's report and recommendation, and, thereby, "fooled [the complainant] to think [he] had a [sic] extension."

As an initial matter, the complainant's allegations of impropriety by local police or other law enforcement officers are not cognizable under the judicial misconduct statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 4.

With regard to his criminal case, the complainant charges only that District Judge No. 1 erred by misapplying the law and the sentence imposed. Without indication of bias or illicit judicial motivation -- of which there is none -- "an allegation that calls into question the correctness of a judge's ruling . . . is merits-related," and, as such, is not cognizable. Rules of Judicial Misconduct, Rule 3(h)(3)(A). Accordingly, this claim is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

The remaining claim against this judge -- that he "blind sided" the complainant by dismissing his § 2255 proceeding before the complainant was able to submit his opposition to the magistrate judge's report and recommendation -- is factually baseless. The docket of the case indicates that the magistrate judge issued three recommended decisions. The judge adopted the first two of the magistrate judge's recommended decisions after the complainant failed to file an objection by the deadline. In response to the third report and recommendation denying each of the complainant's ten grounds for relief, the magistrate judge twice extended the time in which objections must be filed. Before the expiration of the final deadline, the complainant filed an objection and, thereafter, District Judge No. 1 adopted the recommended order dismissing the case. Thus, the claim that the judge prematurely ruled on the magistrate judge's recommended decisions

(causing the complainant to be surprised or "blind sided" by the dismissal of the case) is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

As to District Judge No. 2, see Complaint No. 01-08-90009, the complainant alleges that the judge engaged in wrongdoing while presiding over the criminal trial of the man who was "known as [the complainant's] son." The complainant contends that, during the trial in this case many years earlier, he overheard his name spoken at a restaurant during a lunch recess. The complainant states that the judge and two others were parties to this conversation and that one of the other parties (not the judge) knew the victim of the violent crime in which the complainant had been wrongly implicated. The complainant adds that, after his subsequent arrest many years later, this judge "connected" his current charges to the violent crime during a sealed hearing to which the complainant was "not invited."

The complainant's first allegation against District Judge No. 2 does not amount to cognizable misconduct. The mere mention of the complainant's name at a local restaurant, assuming this in fact occurred, does not alone provide any indication that the judge engaged in improper communications, exhibited bias, or did anything else inappropriate. Thus, the claim is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). Insofar as the complainant is claiming that this district judge somehow misused information gleaned during the conversation in the restaurant to implicate the complainant in subsequent criminal activity, the claim is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

With regard to Magistrate Judge No. 1, see Complaint No. 01-09-90010, the complainant

alleges that the magistrate judge was responsible for the improper surveillance of the complainant's home. The complainant states that, many years earlier, the magistrate judge had had a professional relationship with the senior partner of the complainant's attorney. (The complainant cites a case where the partner of his counsel and the magistrate judge represented opposing parties.) The complainant adds that the newspaper that "smeared" the complainant, after his arrest, was also represented by the magistrate judge's former law firm.

The complainant provides no evidence corroborating his claim that this magistrate judge improperly authorized an investigation of the complainant, or was influenced in his handling of the complainant's cases by the alleged relationship between his former law firm and the partner of the complainant's counsel.¹ Accordingly, the allegation is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).² The complainant's remaining statement that the newspaper (that "smeared" him) was also represented by the magistrate judge's former law firm is both irrelevant and not remotely indicative of judicial wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

The complainant presents no intelligible allegations of misconduct in his fourth complaint, see No. 01-09-90011, against Magistrate Judge No. 2. He notes that this magistrate judge issued a report recommending the dismissal of his § 2255 proceeding, and provided the complainant with a "generous unrequest[ed] extension" in which to file an objection to the recommended decision. As neither this complaint nor the record of the case contain any allegation or evidence of judicial

¹The docket indicates that Magistrate Judge No. 1 handled the pretrial proceedings in the complainant's criminal case, and presided over some of the preliminary proceedings in the earlier prosecution of the complainant's son.

² Nor would this alleged previous professional relationship between the magistrate judge and a partner of the complainant's counsel, without more, suggest bias or the need for recusal under the Code of Conduct for United States Judges, Canon 3C.

impropriety, the complaint is dismissed as not indicative of misconduct, and as unfounded. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A) and 11(c)(1)(C).

For the reasons stated, Judicial Misconduct Complaints Nos. 01-09-90008, 01-09-90009, 01-09-90010 and 01-09-90011 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

10/5/09
Date

Randee L. Lynch
Chief Judge Lynch