

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-10-90013

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: AUGUST 10, 2010

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A litigant has filed a complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), by a district judge in the First Circuit who presided over the complainant's civil action.

The complainant alleges that the judge was biased, as evidenced by the court's orders, which are claimed to have intentionally and unlawfully bifurcated complainant's claim of discrimination from a claim of retaliation. As described below, that is an inaccurate characterization. The complainant asserts that, at a non-recorded pre-trial hearing, the judge gave defendant's counsel the choice whether to bifurcate the claims, stating "I'll leave it up to you." The complainant concludes that, by wrongfully leaving the decision whether to bifurcate the claims up to the defendant's attorney, the judge intended to both evade the law and to deny the complainant a fair trial. The complainant requests "rectification of this wrong."

The complaint is baseless. As an initial matter, the judicial conduct statute does not

provide a mechanism for altering a court order, nor seeking to appeal from an order. See 28 U.S.C. § 351, *et. seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

The reviewed record -- including the misconduct complaint, the docket, the relevant pleadings, and the court's orders -- contains no evidence of bias. The complaint is based exclusively on the complainant's disagreement with the court's order(s) denying requests to amend the complaint.<sup>1</sup> Both before and after trial, the complainant, through counsel, repeatedly sought to amend the complaint to add a count for retaliation based upon the complainant's discharge from employment. The case already included a claim for retaliation related to the initial discrimination charges. The judge repeatedly denied the requests on the grounds that adding the new retaliation claim would delay the trial, and that the new claim was not clearly related, either temporally or substantively, to the original discrimination.

There is no evidence that the judge was biased in any of the rulings made. "Cognizable misconduct . . . does not include . . . an allegation that calls into question the correctness of a judge's ruling . . . ." Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (C).

Because the hearing was not recorded, there is no evidence that the judge left the decision

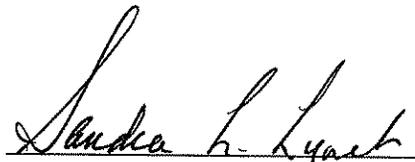
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<sup>1</sup>Complainant's use of the term "bifurcated" is misplaced. The term is generally used to apply to a court's separation of two parts of a trial, such as liability and damages or guilt and sentencing. In the present case, the trial addressed claims of discrimination and retaliation; the court merely denied the complainant's requests to add an additional claim.

whether to "bifurcate" the retaliation claim to opposing counsel and, has been discussed, this was not an issue of bifurcation. In denying the complainant's request to add the claim, the judge noted that the defendant had agreed to allow the complainant to pursue "compensatory damages through the jury's verdict . . . ." This order and the rest of the reviewed record demonstrate the court's impartial consideration of the relevant issues. Thus, on the present facts, the claim as alleged would not constitute misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No.01-10-90013 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

8/10/10  
Date

  
Chief Judge Lynch