

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90033

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 1, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct when the judge dismissed complainant's civil action.

Complainant filed a previous misconduct complaint alleging that a magistrate judge failed to report attorney misconduct in connection with another civil matter. See Judicial Misconduct Complaint No. 01-11-90004. I dismissed Complaint No. 01-11-90004 as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Order, Lynch, C.C.J., In Re: Complaint No. 01-11-90004, May 18, 2011. The Judicial Council affirmed the order of dismissal. See Order, Judicial Council of the First Circuit, In Re: Complaint No. 01-11-90004, October 3, 2011.

The complainant presently alleges that the judge "arbitrarily and capriciously" dismissed the complainant's civil rights case. Complainant states that, harboring a "sinister motive," the judge wrongfully concluded that federal law did not shield complainant from criminal prosecution, as alleged in complainant's civil action. The complainant cites the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) to the effect that "an allegation, however unsupported, that a judge ruled against the complainant because the judge had an improper motive or because the language in the judge's ruling reflects bias, is not merits-related."¹ In reliance on this rule, complainant concludes the judge "cynically used an error of judicial judgment as a shield"

The misconduct complaint is baseless. In the court's memorandum and order, the judge granted the complainant's motion to proceed *in forma pauperis* and liberally construed the filed complaint before determining that it failed to state a claim for relief. The judge explained that the cited statute did not protect complainant from criminal prosecution and that complainant failed to state a claim under other potential avenues for challenging the legality of his conviction and incarceration.

The misconduct complaint is based only upon the complainant's disagreement with

¹The provision on which complainant apparently seeks to rely derives from the Commentary to Rule 3 which provides, in part, that "an allegation -- however unsupported -- that a judge conspired with a prosecutor to make a particular ruling is not merits-related. . . . An allegation that a judge ruled against complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related." Rules of Judicial-Conduct, Commentary on Rule 3.

the court's dismissal of his case. While the complainant asserts the existence of a "sinister" motive underlying the judge's decision, he offers no facts or evidence - in the misconduct complaint, in the court's order of dismissal, or elsewhere - in support of this claim. The allegation of improper motive is presented without any basis in fact and, therefore, is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Insofar as the complainant disputes the substance of the judge's order of dismissal, the misconduct complaint is merits-related. Where, as here, "the decision or ruling is alleged to be the result of an improper motive, . . . the complaint is not cognizable to the extent that it attacks the merits." Rules of Judicial-Conduct, Rule 3(h)(3)(A).

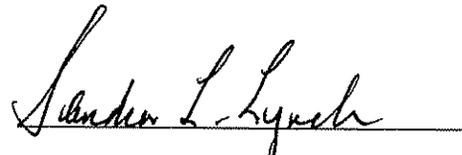
Accordingly, the misconduct complaint is also dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

This misconduct complaint is baseless.

For the reasons stated, Complaint No. 01-11-90033 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

November 1, 2011

Date

A handwritten signature in cursive script that reads "Sander L. Lynch". The signature is written in black ink and is positioned above a horizontal line.

Chief Judge Lynch