

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90006

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 18, 2013

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a circuit judge had committed misconduct by failing to rule on a motion to recuse that complainant had filed in the appeal of his civil case against a government agency. The complainant asserts that the judge's recusal was necessary because the judge lived in the same state as the complainant and had previously worked as a federal prosecutor in the relevant jurisdiction. Complainant contends that these affiliations evidence the judge's bias for the government and a conflict of interest. Complainant asks that the judge be removed from the panel appointed to rule on complainant's appeal.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for entering or modifying an order in a

pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19. The reviewed record of the case - including the misconduct complaint, the docket and the relevant pleadings and court orders - indicates that the misconduct complaint is not cognizable. Further, there is no plausible claim of misconduct.

The motion to recuse was decided on the merits by a panel composed of three different appellate judges, who are not the complained-of judge. It was not submitted for decision to the judge who is the subject of the complaint, because he was no longer on the panel. The record indicates that the judge was only on the duty panel that decided one of complainant's preliminary motions. The following month after that preliminary matter was decided, complainant filed the motion to recuse the judge and briefing was completed. By this time, the composition of the presiding panel had changed. The motion for recusal was referred with the briefs to the merits panel composed of three other appellate judges. This panel found the motion to be without merit and denied it "for failure . . . to demonstrate that [the judge's] impartiality 'might reasonably be questioned.' 28 U.S.C. § 455(a)."

Complainant's disagreement with the substance or timing of this ruling does not constitute a cognizable misconduct complaint. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling . . . [or] . . . an allegation about

delay in rendering a decision or procedural ruling"). Accordingly, the misconduct complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

As the motion for recusal was not provided for decision to the judge who is the subject of the complaint, the judge's failure to rule on the motion is not brought to his attention as not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A) ("A complaint must be dismissed . . . [that] alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts").

Finally, since the misconduct complaint and reviewed record of the proceeding include no information suggestive of judicial bias or other wrongdoing, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaint No. 01-13-90006 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(C).

4/16/13
Date

Sandra Lynch
Chief Judge Lynch