

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90015

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 18, 2013

Complainant is a defendant in an intellectual property proceeding that was initiated over 25 years ago and closed about 17 years ago. Complainant filed a complaint, under 28 U.S.C. § 351(a), alleging that the presiding district judge is biased, engaged in "criminal activity" and "should have recused himself long ago from this case." Complainant was originally represented by counsel but has appeared pro se over recent years.

Complainant essentially alleges that the judge has sought to undermine complainant's success in the proceeding. Complainant asserts that, as part of this effort, the court reporter in the case unlawfully erased the audiotapes of the trial and other court proceedings that were necessary for complainant's defense. Complainant contends that

the transcripts the reporter produced contained multiple significant deficiencies that "made it impossible for [complainant] to prove . . . [his] defense in [the] case"

Complainant references a letter from the judge to complainant, dated roughly five years after the case was closed, stating that the court reporter had indicated that she had "reused the audiotapes after the transcripts were completed," and that they were, therefore, not available to complainant.

Arguing that the governing regulations required the retention of the tapes for ten years, complainant maintains that he was "singled out for this erasure of tapes."

Complainant asserts that these recordings would have demonstrated a "multitude of deletions from the official record that severely prejudiced [complainant] in his case and denied [him] . . . fundamental constitutional rights."

Complainant adds that the judge "interfere[d]" with a related bankruptcy proceeding, had an improper "relationship" with the monitor appointed to the case, and refused to allow the admission of documents that would have vindicated complainant.

In addition to the evidentiary rulings, complainant objects to virtually all of the significant orders issued in the case, beginning with the order, issued over 18 years ago, that granted broad relief to the plaintiff after a bench trial. Complainant takes issue with the court's rejection of complainant's many attempts to modify the original judgment in the case, and concludes that a 2011 order "is in error and biased against [complainant]." In this order, the judge denied complainant's request to file additional motions citing a 2004 order in which the court had enjoined complainant from making further filings

attacking the validity of the judgment entered in the case without leave of court.

Complainant concludes that "the facts of this complaint rise far above misconduct into criminal activity" and adds that the judge "should have recused himself long ago from this case."

The misconduct complaint is baseless and is not cognizable. The reviewed record of the proceeding - including the misconduct complaint, and the docket, pleadings, and orders issued in the district court case and on appeal - provides no evidence whatsoever that the judge is biased or improperly motivated. The record demonstrates that, for over 18 years, complainant has filed repetitive, lengthy motions and multiple appeals seeking to reverse decisions made by the court. These efforts have been wholly unsuccessful. While complainant contends that he is not using the misconduct complaint procedure as "an attempt to reignite [his] case or seek personal revenge against [the judge]," his submission belies this argument.

With respect to the alleged erasure of the audiotapes, complainant offers no evidence that the judge sought to subvert the official record of the proceeding or otherwise interfere with complainant's rights. It appears that the court reporter complied with the governing procedure at the time concerning the reuse of such tapes.¹ Moreover, even if there had been an error by the court reporter or other court staff in this regard (of

¹The ten year retention requirement to which complainant refers applied to the reporter's original shorthand notes, which was the reporting method used in the district court at the time of complainant's proceeding, not to audiotapes that were employed as "back-up" and which remained the personal property of the court reporters. See Guide to Judiciary Policy, Vol. 10, Ch. 6, Appx. 6B, and Vol. 6, Ch. 3, §§ 310.21.10, and 380.40.

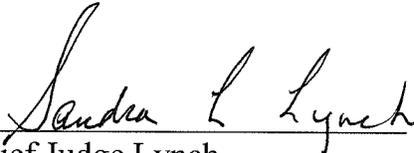
which there is no evidence), it would not be attributable to the presiding judge or indicative of misconduct. See e.g., Boudin, C.C.J., Amended Order, *In Re Judicial Misconduct Complaint No. 406*, September 5, 2005, at 3 (Clerical errors are not attributable to judge and do not suggest judicial misconduct.)

There are likewise no facts whatsoever indicating that the judge interfered with the bankruptcy proceeding, had an improper relationship with the appointed monitor or engaged in any other wrongdoing. Accordingly, the misconduct complaint is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

The misconduct complaint is also not cognizable. There is no evidence that the judge was improperly motivated in issuing the 2011 order to which complainant refers or any other order issued during this lengthy proceeding. "Any allegation that calls into question the correctness of an official action of a judge - without more - is merits-related." Rules for Judicial-Conduct, Commentary on Rule 3. Accordingly, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-13-90015 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).

12/18/13
Date


Chief Judge Lynch