

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90012

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 25, 2014

Complainant, an incarcerated, criminal defendant, filed a complaint, under 28 U.S.C. § 351(a), alleging that the district judge who presided over complainant's criminal prosecution and related civil matter engaged in wrongdoing. Complainant alleges that the judge was biased and has disregarded his professional obligations.

Complainant asserts that, in presiding over the criminal case, filed almost eight years ago, the judge has exhibited a personal bias, lack of integrity, and disregard for his professional and constitutional obligations. Complainant maintains that the judge lacked impartiality and favored "his former alums [sic]." In an enclosed motion for recusal, complainant contends that the judge made a statement in which he "admitted" bias. Complainant further asserts that the judge wrongfully denied complainant the right to

present a witness at trial.

Complainant next alleges that the judge engaged in conspiracy to unlawfully imprison and deport complainant after expiration of his sentence, and deprived him of his constitutional rights to a fair and speedy trial. Complainant states that he was not indicted for 30 months after his initial arrest.

Complainant contends, as well, that the judge improperly "command[ed]" defense counsel to "induce complainant to accept a guilty plea" and then allowed the prosecutor to "change the meaning" of the charges, thereby allowing complainant to be recharged for the same crime and "avoid double jeopardy." Finally, complainant asserts that the judge wrongfully ignored complainant's motion to vacate, filed over two years ago, and his subsequently filed motion for recusal.

The misconduct complaint is without merit. There is no information in the misconduct complaint or in the reviewed record of the case suggesting that the judge was biased or engaged in any impropriety. First, court records indicate that complainant was serving a sentence for another conviction at the time he was indicted in the pending matter. Complainant's issue with the timing of the indictment filed in the present case does not indicate misconduct by the judge. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(A).

The record further demonstrates that, for the several years before complainant's

jury trial and conviction, the parties engaged in extensive discovery, and the court held hearings on multiple motions, including complainant's motion to dismiss. The judge also allowed two of complainant's requests for new appointed counsel.

Complainant filed the motion to vacate shortly after his conviction and sentence were affirmed on appeal. The court promptly ordered the submission of a responsive pleading. Complainant has since filed the motion to recuse submitted with the misconduct complaint, as well as additional letters and motions, and a petition for writ of mandamus which the Court of Appeals denied.

Complainant offers no facts suggesting that the judge "favored" any party, "admitted" to bias, or had any personal relationship that would be suggestive of potential bias. There is likewise no information suggesting that the judge intended to delay the trial, or to violate any of complainant's legal or constitutional rights. Nor is there any indication that the judge sought to compel complainant to enter a guilty plea. Accordingly, the misconduct complaint is dismissed as groundless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Complainant's objections to the judge's rulings in the case do not alone constitute cognizable misconduct. These include complainant's disagreement with court orders on pretrial and evidentiary motions, as well as complainant's double jeopardy claim.

"Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the

correctness of a judge's ruling . . . , without more, is merits-related." Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the misconduct complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). Cognizable misconduct also does not include the claim that the judge has delayed in ruling on complainant's pending motions to vacate the sentence and for recusal. See id., and Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

For the reasons stated, Complaint No. 01-14-90012 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)(D).

9/25/14
Date

Sandra Lynch
Chief Judge Lynch