

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-14-90018, 01-14-90019 and 01-14-90020

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: APRIL 16, 2015

Complainant, an incarcerated criminal defendant, filed a complaint under 28 U.S.C. § 351(a), alleging that the First Circuit appellate judges who dismissed his mandamus petition were involved in a conspiracy. Complainant alleges that the judges were part of a conspiracy to prevent complainant from offering exculpatory evidence on behalf of pretrial detainees in federal court. The misconduct complaint is not cognizable and is frivolous.

Complainant contends that the judges conspired with the State's Attorney General and judges of a United States District Court in the First Circuit to ignore exculpatory evidence that complainant had sought to submit "on behalf of pretrial detainee[s] with criminal offenses pending in the United States District Court." Complainant explains that he had filed the mandamus petition in response to the alleged failure of the Attorney

General and the District Court to recognize an "Affidavit of Potential Defense Witness," that complainant had submitted as "exculpatory evidence of massive corruption."

Complainant concludes that, by summarily dismissing the mandamus petition, the appellate judges have engaged in "misconduct prejudicial to the effective and expeditious administration of the business of the courts."

Complainant adds that the Court of Appeals Clerk wrongfully returned complainant's initial application for the appointment of independent counsel with a letter stating that complainant should file the application in the "appropriate court."

Complainant contends that, after he subsequently resubmitted the application with a letter asking the Clerk to forward the application to the "appropriate court," he instead received the Court of Appeals' dismissal of both the application for independent counsel and mandamus petition.

Finally, complainant submits a "motion for transfer," in which he argues that, under Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), the misconduct proceeding should be transferred to another Circuit Judicial Council. Complainant asserts that the subject judges "undoubtedly" have "undue influence and bias warranting a transfer of this matter."

Complainant offers no facts whatsoever in support of his allegations of conspiracy or other wrongdoing by the judges who reviewed his mandamus petition. The docket of the case indicates that shortly after complainant filed the original proceeding, motion to proceed in forma pauperis (IFP) and application for the appointment of independent

counsel, the court issued an order denying complainant's IFP motion without prejudice. Before complainant refiled the IFP motion, the case was submitted to the appellate panel, which denied the mandamus petition and application for the appointment of independent counsel. As complainant offers no evidence indicating that the judges were improperly motivated in issuing this order, the misconduct complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for 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. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related.").

Absent any information suggesting conspiracy or other wrongdoing by the judges, the complaint is also 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).

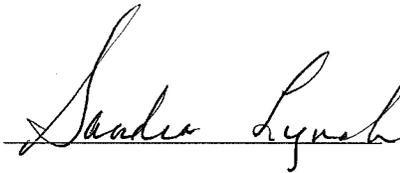
Complainant's allegation that the Clerk or Clerk's Office staff incorrectly returned complainant's initial application for the appointment of independent counsel is not indicative of judicial wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct, Rule 11(c)(1)(A).

Finally, Rule 26 allows the Chief Judge or Judicial Council to ask the Chief Justice to transfer a misconduct complaint in "exceptional circumstances," such as where there is a "serious complaint [with] multiple disqualifications among the original council [or] where the issues are highly visible" Rules of Judicial-Conduct, Rule 26, and Commentary on Rule 26. There is no basis, under the governing Rule, to request a transfer of this matter out of the Circuit.

For the reasons stated, Complaint Nos. 01-14-90018, 01-14-90019 and 01-14-90020 are 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).

4/16/15

Date

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

Chief Judge Lynch