

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-22-90002

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BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: FEBRUARY 7, 2023

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Complainant, a pro se interested party in a bankruptcy case, has filed a complaint under 28 U.S.C. § 351(a) against a bankruptcy judge in the First Circuit. Complainant alleges that the judge engaged in judicial misconduct in presiding over a show cause proceeding brought against complainant in the context of the bankruptcy case. The misconduct complaint is not indicative of misconduct and is frivolous.<sup>1</sup>

Complainant alleges that the judge engaged in judicial misconduct when the judge failed to notify authorities that a witness in a show cause proceeding against complainant testified, at an evidentiary hearing, to engaging in criminal activity and having been

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<sup>1</sup> This is complainant's third misconduct complaint. In complainant's first misconduct complaint, he alleged judicial misconduct in connection with a district judge's handling of his civil case. See Judicial Misconduct Complaint No. 475. Then Chief Judge Boudin dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the Judicial Council affirmed the order of dismissal. See Boudin, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 475 (January 2, 2008); and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 475 (No. 01-07-90012) (May 6, 2008). Complainant filed a second misconduct complaint alleging that a bankruptcy judge engaged in misconduct in presiding over an adversary proceeding against complainant. See Judicial Misconduct Complaint No. 01-20-90008. Then Chief Judge Howard dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-20-90008 (January 20, 2021); and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-20-90008 (May 9, 2022).

incarcerated for this criminal activity. Complainant asserts that the witness' crimes have resulted in the deaths of "many fellow citizens."

The reviewed record, including the misconduct complaint, the docket of the bankruptcy case, and the transcript of the relevant hearing, provides no evidence in support of complainant's allegation of judicial wrongdoing. The record indicates that a pro se, voluntary bankruptcy case had been opened for debtor, and, after debtor failed to respond to the court's order to file various required documents, the judge issued an order to show cause why the case should not be dismissed. In response to the show cause order, the United States Trustee (UST) explained that the UST believed that the bankruptcy petition had been filed without debtor's authorization and requested a hearing. Following a hearing, at which debtor testified that he did not authorize the filing of the petition and that he believed that complainant filed the petition, the judge issued a show cause order directing complainant to show why he should not be sanctioned.

The judge held an evidentiary hearing regarding the show cause order against complainant, at which debtor testified. Complainant, who represented himself at the evidentiary hearing, asked debtor during cross-examination if debtor had been incarcerated for specific criminal activity, and debtor answered that he had been. Counsel for the UST objected, and the judge sustained the objection based on relevance.

The complaint is meritless. The judge was under no legal or ethical obligation to notify authorities of debtor's testimony -- that he had been incarcerated -- and the judge's presumed failure to do so is in no way indicative of misconduct. Nor is complainant's

assertion regarding the impact of debtor's alleged criminal history relevant to the misconduct complaint. Therefore, the complaint is dismissed as not indicative of misconduct, pursuant to 28 U.S.C § 352(b)(1)(A)(i), and as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(A) and (C), respectively.

For the reasons stated, Complaint No. 01-22-90002 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i) and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A) and (C).

February 7, 2023

Date

  
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Chief Judge Barron