

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-22-90009 and 01-22-90010

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: MARCH 21, 2023

Two complainants have filed virtually identical complaints under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainants allege judicial misconduct in connection with their related criminal and civil cases, over which the district judge presided. The misconduct complaints are not cognizable and are baseless.

Citing to documents filed in complainants' related criminal and civil cases, complainants allege that the district judge violated complainants' right to a fair trial and "cover[ed] up" alleged prosecutorial misconduct, by refusing to order government agents to disclose exculpatory evidence. Additionally, complainants assert that the judge repeatedly made legal rulings based on opinion, "not on evidence and law."

Complainants further allege that, in an effort to deny complainants' "right to find out the truth," the district judge intentionally made multiple false statements in an order issued in the criminal case, and in the order granting defendants' motion to dismiss the

civil case. Finally, complainants allege that the district judge repeatedly refused to recuse so that the civil case could be dismissed.

There is no evidence, either in the complaints or in the reviewed record, that supports complainants' claims that the judge engaged in any wrongdoing in presiding over their cases.

Complainants' Criminal Case

After a ten-day trial, a jury convicted complainants of several crimes, after which the district judge sentenced each complainant to a period of incarceration, based on the number of counts on which they had been convicted, and awarded restitution.

Complainants appealed their convictions, sentences, and the restitution order, all of which the Court of Appeals affirmed in a lengthy opinion.

The following year, one complainant pro se filed a motion to vacate under 28 U.S.C. § 2255, as well as several motions requesting exculpatory evidence.¹ The district judge issued a multiple-page memorandum and order denying the motion to vacate and motions requesting exculpatory evidence. In the order, the judge described the proceeding and explained that the issues that were previously or could have been raised on direct appeal and in complainant's challenges to the First Circuit's decision were procedurally barred. The judge further determined that complainants' remaining claim –

¹ Both complainants were represented by counsel in the criminal case and in its appeal. One complainant pro se filed the motion to vacate and subsequent motions in the criminal proceeding. Both complainants appeared pro se in the subsequent civil case. See infra pp. 3-4.

violation of the right to a fair trial based on the nondisclosure of alleged exculpatory evidence – failed to meet the burden required to compel production of the materials or establish ineffective assistance of counsel, as alleged. Thereafter, one complainant filed a motion for recusal, which was denied.

The same complainant subsequently filed a motion for reconsideration and a renewed request for recusal of the district judge, alleging errors in the court's order denying his motion to vacate and motions requesting exculpatory evidence, and the judge's "favoritism" for government agents. In a multiple-page order, the judge denied the motion, explaining that: (1) opinions formed on the basis of facts introduced or events that have occurred in the course of current or prior proceedings do not constitute a basis for a bias claim; and (2) complainant did not present any intervening change in the law impacting the procedurally barred claims. The same complainant filed another motion for recusal, which the judge denied.

Complainants' Civil Case

Complainants pro se filed a civil action against government agents and attorneys (collectively defendants), alleging conspiracy and malicious prosecution in relation to the criminal case. Defendants filed a joint motion to dismiss for lack of personal jurisdiction, insufficient service, and failure to state a claim upon which relief can be granted, which complainants opposed. After the case was reassigned to the district judge, complainants filed a motion for reconsideration and multiple motions for the judge's recusal, arguing that the judge is biased and committed legal errors in the related criminal matter. The

district judge denied the motions, explaining that the rulings in the related criminal matter do not constitute a basis for recusal and that the case was reassigned to the judge as a related matter under the court's local rule.

Thereafter, the district judge entered a multiple-page memorandum and order, briefly describing the background of the case, analyzing defendants' arguments to dismiss, see supra p. 3, and finding that the complaint fails to state a claim that defendants violated complainants' rights under the applicable case law. The district judge granted defendants' motion to dismiss, and the case was dismissed. Subsequently, complainants filed a renewed motion to recuse, which was denied as moot as the order of dismissal had previously entered.

The misconduct complaints are meritless. Complainants provide and the record includes no information to support the allegation that, by denying complainants access to allegedly exculpatory evidence, the district judge violated complainants' right to a fair trial and concealed prosecutorial misconduct. Nor do complainants identify any facts indicating that the judge was biased or improperly motivated in presiding over the proceedings. The lengthy record of both proceedings demonstrates that the district judge carefully considered all of complainants' claims, including their request for the alleged exculpatory evidence, in clearly reasoned, multiple-page orders based on the record. See supra pp. 2-4. Complainants' allegations – that the judge erroneously denied requests for exculpatory evidence and to recuse, and made incorrect statements and legal rulings – derive exclusively from complainants' disagreement with the substance of the court's

orders. As such, the complaints are not cognizable. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."); and id. Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related."). Accordingly, the complaints are dismissed as not cognizable and as baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D).

For the reasons stated, Complaint Nos. 01-22-90009 and 01-22-90010 are dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D).

March 21, 2023
Date



Chief Judge Barron