

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 482  
(# 01-08-90005)

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BEFORE  
Boudin, Chief Circuit Judge

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ORDER  
ENTERED: MAY 20, 2008

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On March 17, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. This complaint is the third filed by the complainant. On May 28, 2003, the complainant filed Complaint No. 348 against a magistrate judge which I dismissed on August 4, 2003, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). By order, dated December 16, 2003, the Judicial Council affirmed the order of dismissal. On September 14, 2004, the complainant filed Complaint No. 390 against the district judge charged in the present matter which I dismissed on November 24, 2004. The complainant did not file a petition for review of this order. Both of these complaints alleged impropriety in connection with the complainant's criminal prosecution.

The complainant presently charges that the district judge has used "the court as [a] forum for retaliation" against the complainant for filing a previous judicial misconduct complaint against him. The complainant cites two recent proceedings that he filed challenging his conviction and sentence

and contends that the orders of dismissal which the judge issued in each of these cases contain "nonsensical phrase[s] that make no sense at all let alone provide . . . reason for the [court's] denial."<sup>1</sup>

The complainant next alleges that the judge improperly neglected to rule on motions for disqualification that the complainant filed in each of these two proceedings. Finally, the complainant contends that, as each of his three judicial misconduct complaints actually relate to the same underlying criminal case, they should be considered a "single complaint . . .," and that the rule authorizing the judicial council to restrict the filing of multiple complaints is unconstitutional.

As an initial matter, the judicial misconduct statute, 28 U.S.C. § 351, et. seq., and the Rules for Judicial-Conduct and Judicial-Disability Proceedings do not contemplate the consolidation of three complaints (filed over a five-year span against two judicial officers) into one matter. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Commentary on Rule 8, which provides for the designation of separate complaints for each judicial officer charged with wrongdoing. Nor does the judicial misconduct statute provide an avenue for challenging the constitutionality of the Rules of Judicial Misconduct.

A review of the complaint, the dockets and the court orders in the cited cases indicates that the complainant filed the first motion to vacate his sentence under 28. U.S.C. § 2255 in May 2007. Shortly thereafter, the judge issued an order explaining that, since the criminal conviction which the complainant was challenging was pending on appeal, the district court lacked jurisdiction to consider the matter. Accordingly, the court denied the complainant's motion without prejudice.

The complainant filed the subsequent § 2255 motion in January 2008. The following month,

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<sup>1</sup>The objectionable portions cited from each of the respective orders of dismissal include: "[c]onsequently, the motion is denied without prejudice," and "[i]n accordance with this court's denial of the motion to vacate under 28 U.S.C. Section 2255 filed by the petitioner. . . ."

the judge issued an electronic order denying the complainant's motion and then issued an order of dismissal stating that "[i]n accordance with this court's denial of the motion to vacate under 28 U.S.C. Section 2255 filed by the petitioner . . . , it is hereby ordered: the above-captioned action is hereby dismissed." The complainant filed an appeal of this order which is pending. As there is no evidence in the reviewed record indicating that the judge sought to retaliate against the complainant, or otherwise harbored any improper motivation in dismissing the cases, the charges to that effect are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Nor do the orders to which the complainant objects contain "nonsensical phrases." The order in the first case explains the ground for dismissal, namely, that the court lacked jurisdiction since the underlying case is on appeal. On the present facts, the court was not obligated to provide grounds for its denial of the redundant motion filed in the subsequent case. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

As there is no evidence of improper judicial motivation, the complaint insofar as it reflects the complainant's disagreement with rulings entered by the court, it is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B). Finally, I note that, while the record does not indicate that the complainant filed motions for disqualification in either of the proceedings, the pendency of any such motions would not alone suggest judicial misconduct within the meaning of the statute. See 28 U.S.C. § 352(b)(1)(A)(i).

For the reasons stated, Judicial Misconduct Complaint No. 482 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii).

  
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Chief Judge Boudin