

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-08-90022

---

BEFORE  
Lynch, Chief Circuit Judge

---

ORDER  
ENTERED: SEPTEMBER 30, 2008

---

On July 28, 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. The complainant alleges that the judge engaged in impropriety in connection with the complainant's civil rights case against a town, police officers and others arising from the complainant's allegedly unconstitutional arrest and prosecution. The judge dismissed complainant's malicious prosecution claims against all but one of the defendants.

The complainant alleges that he is suspicious that the judge conspired with counsel, through improper ex-parte communication, to wrongfully dismiss the case because the court dismissed the action against the defendants who were represented by "well known" attorneys "from prominent [l]aw firms," while not dismissing the case against only the defendant whose counsel had "never tried [a] case in [f]ederal court . . . ."

The complainant further asserts that the judge acted wrongfully in denying his motion for reconsideration because the judge refused to "[l]ook at evidence from [the complainant's] companion

case . . . which was at his fingertips" while saying the plaintiff had not presented new evidence. The complainant submits the documentation that he contends the judge should have looked at before denying his motions and concludes that the judge has engaged in an "arrogant, totalitarian decision making process," in violation of the judicial misconduct statute.<sup>1</sup>

The misconduct complaint is without merit. A review of the relevant dockets indicates that the complainant filed the first federal civil rights case against the town and several employees in 2007. The defendants filed a motion for summary judgment and a magistrate judge held a pretrial conference. The case was handled consecutively by two district judges, neither of whom are charged in the present matter. In 2008, a judge, (not the judge at issue) held a hearing on the defendants' motion for summary judgment, after which the court issued an order dismissing the complainant's claims on the grounds of res judicata (based upon the complainant's unsuccessful litigation of identical issues in state court).

Meanwhile, the complainant filed the case which is the subject of this misconduct complaint against a judge. This case was filed against the town defendants who were subject to the previous action, and two additional individuals. The town defendants and one of the other defendants each filed a motion to dismiss to which the complainant filed an opposition. Thereafter, the judge named in the misconduct complaint issued orders granting each of the motions to dismiss. The court held that the claims against the town defendants were barred by res judicata and that the complainant did not allege sufficient facts to sustain a pendant state claim against the other defendant.

---

<sup>1</sup>The documents filed with the misconduct complaint include miscellaneous pleadings filed by the complainant in the case at issue, pleadings filed in the complainant's previous federal court case, discovery materials and transcripts from a former state court case (apparently concerning the same issues), and a document purporting to describe the perjury of one of the defendant police officers.

Thereafter, the complainant filed a motion for the judge to recuse himself and for reconsideration, as well as a motion asking the judge to read the evidence in the complainant's related case. The judge denied each of these motions. As to the former motion, the judge held that the complainant did not allege "sufficient facts to support his request for recusal" or provide any "new persuasive evidence or argument to support his request for reconsideration." The latter motion was summarily denied.

The remaining defendant subsequently also filed a motion to dismiss. The judge issued an order noting that, as the only remaining claims were founded in state law over which the court appeared to lack independent jurisdiction, the complainant must show cause why the case should not be dismissed. Shortly thereafter, the complainant filed a motion requesting additional time to respond to the motion to dismiss, followed by his opposition to the motion to dismiss two days later. Nevertheless, the court subsequently allowed the complainant's motion for more time. To date, no further action has been taken in the matter.

A thorough review of the misconduct complaint, dockets, pleadings and court orders, provides no indication that the judge engaged in ex parte communication with the defendants' counsel, participated in a conspiracy to defeat the complainant's claims, or engaged in any other wrongdoing in connection with the complainant's proceeding. The court's multiple orders demonstrate that the judge considered the parties' pleadings and framed his decisions accordingly. The complainant does not provide a single fact suggesting that the judge's rulings were influenced by relationships with counsel or by any other improper factor. The complainant also fails to offer any basis for concluding that the judge improperly did not review the material in the related case.

Furthermore, the judge has allowed ample time for the complainant to respond to the motion

to dismiss. There is no basis provided to call the judge's impartiality reasonably into dispute, as complainant alleges. Even if the court were mistaken in its rulings, and I do not suggest that there was any mistake, such a mistake would not alone amount to misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A).

Accordingly, the allegations of ex parte communication and conspiracy are dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C). Insofar as the complaint is based exclusively on the complainant's disagreement with the judge's rulings (including the denial of the motion for recusal), it is also dismissed as directly related to the merits pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90022 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

9/30/08  
Date

Sandra Lynch  
Chief Judge Lynch