

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90020

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 8, 2010

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a First Circuit district judge. The complainant alleges that the judge engaged in impropriety while presiding over the complainant's social security appeal.

The complainant charges that the judge engaged in improper ex parte communication with defense counsel, members of the Federal Bureau of Investigation (FBI), as well as with representatives of the President and the Governor. The complainant asserts that, during these improper communications, defense counsel lied to the judge about the complainant's social security payments. The complainant further alleges that the judge has been improperly influenced in the case by the Governor. The complainant references three alleged surveillance videos that "indirectly and in some ways directly support . . . these allegations."¹

¹The first video allegedly recorded two white males at an identified date and location, one of whom (an attorney not involved in the complainant's case) is explaining "that [the Governor] told him to file false charges of arson against [the complainant]." The second video allegedly

The complainant includes allegations of wrongdoing by a docket clerk with the U.S. District Court. The complainant states that the clerk would not issue subpoenas without the judge's permission, misdated her filings, and "established a pattern of abuse against [her]."

The complaint is baseless. The reviewed record, including the complaint, the docket, relevant pleadings, and the court's orders, provide no evidence that the judge engaged in *ex parte* communication or in any other wrongdoing in connection with the complainant's case. The record indicates that, shortly after the case was filed, the judge authorized the complainant to proceed *in forma pauperis* (IFP) and authorized service of process by the United States Marshal. Several months later, the judge directed the complainant to obtain training in electronic filing, denied the complainant's motion for summary judgment without prejudice, and issued a briefing schedule. The parties have since filed additional motions which are pending.

The complainant does not supply any videotapes. Nor would the information purportedly captured in the alleged video tapes, see note 1, *supra*, substantiate her claims against the judge. Accordingly, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial Misconduct), Rule 11(c)(1)(C). Insofar as the complainant disputes the substance of any of the court's rulings, the complaint is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial Misconduct, Rule 11(c)(1)(B).

The remaining charges against defense counsel and against the docket clerk are not cognizable under the judicial misconduct statute. See 28 U.S.C. § 351(d), and Rules for Judicial

portrays defense counsel at the federal courthouse stating to a "white female": "I told him I could get this case dropped as frivolous. But I'm not going to have to do anything, [sic] in this case." The third video allegedly captures unidentified men, also at the courthouse on a specified date, saying that the judge was "mad" with defense counsel "because she lied [to the judge]."

Misconduct, Rules 4 and 8(d). See also First Circuit Local Rules for Judicial-Conduct and Judicial-Disability Proceedings, Local Rule 8. Nevertheless, the complainant's charge -- that the clerk has misdated several of her filings -- has been investigated.²

For the reasons stated, Judicial Misconduct Complaint No.01-09-90020 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

2/8/10.
Date

Shadrach L. Lynch
Chief Judge Lynch

²It appears that there were several occasions when the date stamped on the pleading when it was received by the Clerk's Office was different than the date the document was docketed. Clerk's Office staff indicates that this discrepancy is due to an occasional delay between the pleading's receipt and its docketing, depending on the time of day the document was filed, weekends, holidays and the like. There is no issue of clerical "abuse" or impropriety. Nor would the clerk's reliance on the judge for permission to issue subpoenas demonstrate wrongdoing of any kind.