

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-09-90021

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER  
ENTERED: MARCH 8, 2010

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Complainant, a frequent 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 misconduct while presiding over the complainant's civil rights case, and seeks to remove the subject judge from the case.

The complainant charges that the judge engaged in "bigoted and unlawful conduct toward [the complainant]," and is biased against him because he is not an attorney. The complainant asserts that the judge unlawfully denied the complainant the ability to engage in discovery by denying his requests for subpoenas. The complainant further states that, when he filed a motion to vacate the court's order denying the requests for subpoenas, the judge wrongfully issued an order under Rule 12(f) striking the complainant's motion. The complainant argues that Rule 12(f) "does not authorize a judge to strike a motion under any circumstances" but that the judge did so in order to prevent the matter from being reviewed on appeal.

The complainant next contends that the judge improperly dismissed the complainant's case

"on his own volition without any basis in law." He asserts that the judge improperly construed a "notice" the complainant had filed as a motion for voluntary dismissal. The complainant explains that this "notice" informed the court that the complainant intended to file a lawsuit in state court against the same defendants because the complainant had "zero expectation of [the judge] adjudicating [his] claims." The complainant concludes that "no man of common intelligence could possibly believe that [the complainant's] Notice could be asking for a dismissal [because it was ] concurrently filed . . . [with] motions to extend discovery, compel discovery and seeking [sic] a status conference."

The complainant also alleges that the judge wrongfully directed his courtroom clerk to order the U.S. Marshals to physically remove the complainant from the courthouse and to "threaten" him with trespass. The complainant states that the judge has "created such a hostile environment for [him] in the courthouse that [he] fears for [his] health and safety . . . ." The complainant states that he eventually got another judge to issue an order requiring the U.S. Marshals to allow him to enter the courthouse. The complainant asks that another judge be assigned to his case, and requests that he be provided access to the courthouse without the "threat of violence from the US [sic] Marshals."

The claims of misconduct asserted in the complaint are baseless. As an initial matter, the judicial misconduct procedure does not provide a mechanism for obtaining the removal of a judge from a case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial Misconduct), Rules 11(a) and 20. Next, the reviewed record, including the complaint, the docket, relevant pleadings, and the court's orders, provides no evidence that the judge was biased against the complainant -- for any reason, much less the asserted reason that the judge is biased against non-lawyers. With regard to the complainant's request for subpoenas, the record indicates that the complainant filed the referenced motion for issuance of subpoenas to allow for discovery. In

response, the judge issued an order observing, in part, that the complainant requested subpoenas to serve on individuals who were not parties to the case and stated that complainant sought to "ruin" the defendants. Thus, the judge required the complainant to make a "preliminary showing of compliance under Fed.R.Civ.P. 45, including 'reasonable steps to avoid imposing undue burden or expense' on the non-parties." The judge's four-page order contained a substantive analysis of applicable case law under Fed.R.Civ.P. 45 and authorized the complainant to make the requisite showing by "ex parte submission to the court" should he choose to do so.

The complainant then filed a motion to vacate the court's order denying the requests for subpoenas in which he referred to the judge as a "well know segregationist and bigot." The judge struck this motion to vacate (and another motion) pursuant to Fed.R.Civ.P. 12(f) which authorizes a court, on its own or on a party's motion, to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

The complainant's subsequent filing of a "notice" of his intent to file a state court action against the same defendants does not support the claim of misconduct. The notice directed insulting and inappropriate language at both the judge and the defendants, and stated that the complainant was pursuing state court claims against the defendants because he knew the federal case would never go to trial and was "DOA". The judge construed the notice as a motion for voluntary dismissal and closed the case. The complainant filed a "demand" for the judge to reconsider the dismissal and recuse himself from the case (also containing inappropriate language) which the judge "struck as impertinent pursuant to Fed.R.Civ.P. 12(f)." Contrary to the complainant's assertion, a motion is a "pleading" within the meaning of Fed.R.Civ.P. 12(f).

The complainant has not alleged any facts indicating that any of the cited orders was

motivated by bias or improper animus on the part of the judge. As there is no evidence of bias or malice, the complaint is dismissed as unfounded pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See 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).

There is a remaining charge that the judge improperly ordered the complainant removed from the courthouse. Complainant has not been unreasonably excluded from the courthouse; he has been put on notice of inappropriate conduct and that, if such conduct continues, it could lead to further orders. The record of the case, including information obtained from clerk's office staff, indicates that, on several occasions, the complainant appeared agitated, raised his voice, and used inappropriate language when conversing with court staff. As indicated in an order issued by the judge, the complainant was not "banned" from the courthouse. The judge did, however, remind the complainant that "inappropriate conduct" of the type in which the complainant had engaged could precipitate issuance of such an order. Furthermore, on at least one occasion, the complainant's inappropriate behavior toward clerk's office staff required the intervention of the U.S. Marshals. Complainant may avoid these issues by governing his own conduct and not engaging in inappropriate behavior. As there is no evidence suggesting that the judge denied the complainant reasonable access to the courthouse, the charge to that effect is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See Rules for Judicial Misconduct, Rule 11(c)(1)(C). Insofar as the judge required the complainant to comply with the court's general policies governing courthouse access and appropriate behavior, not only was there no misconduct, see 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial Misconduct, Rule 11(c)(1)(A), but such an order was entirely appropriate.

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90021 is dismissed,

pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii).

3/8/10  
Date

Andrea L. Lynch  
Chief Judge Lynch