

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-09-90022

---

BEFORE  
Lynch, Chief Circuit Judge

---

ORDER  
ENTERED: MARCH 8, 2010

---

Complainant, a litigant who proceeded pro se after his counsel was permitted to withdraw, 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 proceeding. Specifically, the claimed misconduct is that the judge improperly dismissed the case after it went through alternative dispute resolution (ADR) and that, when that dismissal order was withdrawn and the case was reopened, the judge later dismissed the case.

The complainant charges that, on two occasions, the judge improperly dismissed the complainant's case "without notifying the [complainant] and without just cause." The complainant further alleges that the judge neglected to schedule the case for trial, as recommended by the alternative dispute mediator, and neglected to "enforce and enter judgement against the defendants" in accordance with the signed settlement agreement. The complainant adds that the judge also violated the complainant's rights under the Americans with Disabilities Act (ADA) but does not specify how. The complainant includes a copy of an apparent agreement reflecting the settlement

of an earlier case by the complainant and the defendant in that proceeding (who is not a party to the case at issue).

The complainant's allegations are baseless. The reviewed record indicates that the complainant's counsel initiated the proceeding at issue against the insurer of the defendant in the earlier case for failing to defend and indemnify its insured, and pay the damages agreed to in the settlement of that proceeding. The judge referred the case to ADR, after which the ADR provider reported that attempts at mediation had not succeeded and the case should be restored to the trial list.

Thereafter, the judge authorized the withdrawal of the complainant's counsel and, sua sponte, dismissed the case. Upon motion of the complainant, the judge reopened the case, noting that the case had been closed "due to a mistaken reading of the docket." A number of months later, the complainant filed a motion to enter judgment and enforce the settlement agreement. The court denied this motion and issued judgment for the defendants, explaining that there was no applicable settlement agreement and the defendants denied coverage of the complainant's claims. Thus, the judge's first order of dismissal was retracted, and the subsequent order was based upon the judge's evaluation of the complainant's claims under the governing law. The complainant's disagreement with the court's dismissal of the case does not alone provide grounds for a cognizable complaint of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial Misconduct), Rule 11(c)(1)(B). See also Rules of Judicial Misconduct, Rule 3(h)(3)(A) (An "allegation that calls into question the correctness of a judge's ruling . . . without more, is merits-related" and so not cognizable as misconduct). Filing an appeal, which the complainant did not do, provided the sole means of challenging the merits of this ruling.

The complainant's remaining assertions are equally without merit. The report of the ADR provider merely indicates that mediation was not successful. The presiding judge was not, in any

event, required to hold a trial in the case if a trial was not called for under the Federal Rules of Civil Procedure. As to the complainant's receipt of notice, the record indicates that, once complainant's counsel had withdrawn, all court orders were mailed to the complainant. There is no evidence that they were not so mailed; even if there were error, that would not suggest judicial impropriety. See 28 U.S.C. § 352(b)(1)(A)(i). See Rules for Judicial Misconduct, Rule 11(c)(1)(A). Finally, the assertion that the judge discriminated against the complainant because of a disability is not supported by any information in the complaint or in the reviewed record. See 28 U.S.C. § 352(b)(1)(A)(iii). See Rules for Judicial Misconduct, Rule 11(c)(1)(C).

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90022 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

Sandra L. Lynch  
Chief Judge Lynch