

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90025

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: APRIL 12, 2010

Complainant, an incarcerated 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 action.

The complainant essentially alleges that the court exhibited bias or a disability when it wrongfully dismissed the complainant's case. The complainant states that the judge issued an order transferring the case to a different federal court. The complainant explains that the order further stated that the matter would be remanded if that court determined that it lacked jurisdiction. The complainant states that the court to which the case was transferred subsequently issued an order dismissing the case for lack of jurisdiction and transferring it back to the federal district court. The complainant states that he then filed a motion for a procedural order directing the defendant to file an answer or responsive pleading, which the judge wrongfully denied, citing his earlier order transferring and closing the case. The complainant states that the judge should not have closed the case on transfer, but should have entered an order staying proceedings, so that it could be remanded

to the district court if necessary. The complainant concludes that the judge either has a "disability" because the judge "forgot [that the court] ordered the case remanded to the USDC," or is "biased, and is too involved in [the] case to want it to go forward into the light of day."

The complainant also contends that the judge presided over the complainant's state court criminal prosecution, roughly 30 years earlier, that resulted in the complainant's unlawful imprisonment. The complainant asserts that relevant testimony "disappeared prior to [his state court] murder trial." The complainant alleges that the defendant in his civil case had withheld these documents from the judge prior to the complainant's trial, and that the judge then "further[ed] the fraud" when he sentenced the complainant to life imprisonment without parole. The complainant continues that, when the missing transcripts were discovered several years ago and the trial court failed to take any action, the complainant initiated his civil proceedings, including the one at issue in the present matter. The complainant asks that his case be reopened, that the defendant be directed to file an answer, and that the case be reassigned to a different judge.

The complaint is baseless and frivolous. As an initial matter, the judicial misconduct procedure does not provide a mechanism for modifying a court order or for removing a judge from a case. See 28 U.S.C. § 351, et. seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rules 11, 19 and 20.

Moreover, the complaint and the docket, as well as the relevant pleadings and court orders, provide no evidence that the judge was biased or disabled in the handling of the complainant's civil proceeding. As the complainant observed, the judge issued an order transferring the complainant's case to a different court and asking that the matter be remanded to the federal district court if the court to which the case was transferred determined that it lacked jurisdiction. The docket indicates

that the case was closed several days later. Thereafter, the court to which the case was transferred issued an order dismissing the case and referring it back to the federal district court. Due to an apparent clerical oversight, this order was not sent to the federal district court. Upon review of the misconduct complaint, Circuit Executive Office staff contacted the other court which has since sent the order to the district court.

As a result, the order dismissing the case and returning it to federal district court was not part of the district court's record when the judge denied the complainant's motion for an order directing the defendant to submit a responsive pleading. (The complainant's lengthy motion mentioned the other court's order but did not include a copy.) There is no evidence suggesting that the judge harbored any illicit motivation, or was otherwise incapacitated, in rendering the decision denying the complainant's motion, or elsewhere in his handling of the case. Nor does clerical error, even if it were by the district court (as it was not), suggest judicial misconduct. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005.

Accordingly, the misconduct complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C). As there is no evidence of bias or disability, insofar as the complaint is based on the complainant's disagreement with any of the orders issued in his case, it is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).


Finally, state court records confirm that the district judge charged in the present matter had presided over the complainant's state court murder trial approximately 30 years ago. The complainant's challenges to the judge's handling of that proceeding have been fully and finally litigated and do not suggest judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules

of Judicial Misconduct, Rule 11(c)(1)(A).

We also note that this misconduct complaint is the sixth filed by the complainant. Each of his previous complaints, filed against a total of three other district judges, was dismissed. Complainant is cautioned against filing meritless and frivolous misconduct complaints.

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90025 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

4/12/10
Date


Chief Judge Lynch