

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-10-90014

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 7, 2010

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Complainant, a litigant, filed a complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), against a First Circuit district judge. The complainant charges that the fact that the judge ruled against him is the basis for an inference that the judge retaliated against him. The retaliatory motive, he says, comes from the judge's former employment which created a conflict of interest that required the judge to withdraw sua sponte from the complainant's case. The complainant asserts that the judge was employed at a federal governmental agency during the time that the complainant was arrested in 2007 and prosecuted in state court for sending an allegedly threatening letter to the agency. From this, the complainant alleges that the judge wrongfully failed to withdraw from presiding over the complainant's civil rights case.

The 2007 arrest and the events precipitating it bear no relationship to the case at issue in the present matter in federal court in which the complainant challenged an arrest in 2005 on unrelated charges. Nevertheless, the complainant contends that, as an "alleged victim" and "potential witness"

to the 2007 arrest, the judge was obligated to withdraw from the complainant's case challenging the earlier 2005 arrest.

The judge was under no legal or ethical duty to withdraw from the complainant's proceeding. Canon 3(C)(1)(a) of the Code of Conduct for United States Judges (Code of Conduct) requires disqualification, absent remittal, when "the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . ." Code of Conduct, Canons 3(C)(1)(a).<sup>1</sup> There is no evidence that the judge harbored any "personal bias" against the complainant or had any personal knowledge of facts relevant to the proceeding over which the judge presided. See Code of Conduct, *supra*, Canon 3(C)(1)(a). The judge issued two extensive rulings in the case based on the evidence presented. There are no facts indicating that the judge was improperly motivated in issuing these rulings; the complainant concedes that the claim of illicit animus is inferred from the fact that the court issued ruling(s) adverse to the complainant's interests. There is also no indication that the judge had any information concerning the case beyond that presented in court. Thus, the claim(s) that the judge was obligated to withdraw because of actual bias or personal knowledge are dismissed for lack of evidence, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial-Conduct), Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.

Canon 3(C)(1)(e) of the Code of Conduct requires disqualification, absent remittal, when "the judge has served in governmental employment and in that capacity participated as a judge . .

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<sup>1</sup>While violations of the Code of Conduct do not necessarily constitute judicial misconduct, the Code of Conduct offers standards applicable to misconduct proceedings. See Code of Conduct, Commentary to Canon 1.

. , counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy." Code of Conduct, Canons 3(C)(1)(e).

There is no information indicating that the judge, while engaged in his previous employment, was even aware of, let alone participated in, the events that precipitated the complainant's arrest.<sup>2</sup> The case before the judge -- addressing the earlier unrelated arrest -- had no factual or legal relationship to the events that prompted the complainant's latter arrest or to the state court proceedings that followed. Nor did the civil case over which the judge presided involve activities under investigation during the judge's former employment. Cf., Guide to Judiciary Policy, Vol. 2B, Ch. 3, Compendium of Selected Opinions, § 3.3-3(a-5). The judge's previous employment did necessitate recusal from the complainant's case, or otherwise constitute judicial misconduct. The complaint is, therefore, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No.01-10-90014 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B).

10/7/10  
Date

Sharon R. Lynch  
Chief Judge Lynch

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<sup>2</sup>The record indicates that two staff members of the agency were authorized to testify in state court as fact witnesses concerning the receipt and contents of the letter received from the complainant that prompted the charges.