

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-10-90016

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: JULY 20, 2010

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Complainant, an incarcerated 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 misconduct while presiding over the complainant's civil action. The complainant asserts that the judge is biased against him, as evidenced by the judge's intentional miscalculation of the complainant's filing fee, and because of the judge's former employment. The complainant asks that the judge's miscalculation of the filing fee be "rectified."

The complaint is baseless. As an initial matter, the judicial misconduct procedure does not provide a mechanism for altering the filing fee, or any other court order. 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.

The reviewed record -- including the misconduct complaint, the docket, the relevant pleadings, and the court's orders-- provides no evidence that the judge was biased or improperly

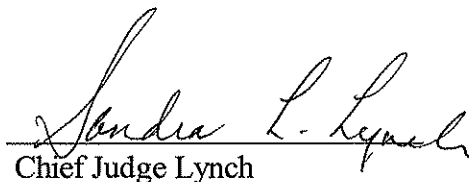
motivated in ordering the payment of a filing fee or otherwise in connection with the complainant's case. As to the filing fee, the judge allowed the complainant's In Forma Pauperis motion, but observed that, as an incarcerated litigant, the complainant was obligated to make payments toward the filing fee. The court calculated the amount required and, although the complainant was authorized to submit an alternative calculation, he did not do so.

There is also no information supporting the claim that the judge was influenced in his handling of this case by reason of his former employment. As there is no evidence of bias or improper judicial motivation, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Insofar as the complaint is based on the complainant's disagreement with the order(s) regarding the filing fee, or any other orders issued by the court, 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, although there is no evidence of error in the court's calculations concerning the filing fee, any such error would not alone suggest judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No.01-10-90016 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

7/20/10  
Date

  
Chief Judge Lynch