

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90021

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 16, 2010

Complainant has filed a complaint alleging a violation of the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a), against a district judge within the First Circuit. The complainant alleges that the judge was biased in that the period of time before issuing rulings in the complainant's civil case was unreasonable and because the complainant is a pro se litigant.

The complainant asserts that the eight month period of time before ruling on a motion filed by the defendant is evidence of bias. The complainant states that, without reason, the judge delayed over eight months before allowing a "routine" motion, and, thereby, interfered with the complainant's right to pursue the case. The complainant alleges that the judge wrongfully assumes that the claims of pro se litigants are meritless.

The complainant raises several related issues pertaining to court staff. The complainant alleges that court staff failed to reply to the complainant's written requests for a conference and to the complainant's oral and written requests for subpoenas. The complainant further charges that she was denied advance notice of the cancellation of a scheduling conference, and did not learn that the

court had cancelled the conference until she appeared for it.

The complaint is not cognizable as a misconduct complaint. That allegation is accurate on the facts, and a source of concern, though not of misconduct. "Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive . . . or habitual delay" Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(B). The complainant presents no evidence of bias or improper motive on the part of the judge. The complainant infers that the judge's delay in ruling on a single motion is alone indicative of judicial bias. Because there are many potential reasons for instances of delay, a single occurrence of judicial tardiness is not, alone, misconduct. See id., at Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge"). Accordingly, the claim of bias is dismissed as lacking factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as merits-related, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.

As the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), authorizes the filing of a complaint only against federal judges, allegations against court staff are not cognizable. Nor are clerical errors attributable to the judge. See Amended Order, Boudin, C.C.J., In Re: Complaint No. 406, September 9, 2005, at 3 (Clerical error does not alone suggest judicial misconduct.)

Nevertheless, members of the Circuit Executive's Office have investigated and addressed with the District Court the allegations pertaining to court staff to ensure adherence to court rules of practice and procedure.

For the reasons stated, Judicial Misconduct Complaint No.01-10-90020 is dismissed,

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

12/16/10
Date

Sandra L. Lynch
Chief Judge Lynch