

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINTS NOS. 01-11-90019, 01-11-90020, 01-11-90021, 01-11-90022, 01-11-  
90023, 01-11-90024, and 01-11-90025

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: SEPTEMBER 14, 2011

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Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge and all active members of the First Circuit Court of Appeals engaged in misconduct while presiding over the complainant's criminal proceeding, appeal, and subsequent petitions for post-conviction relief. Pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), the First Circuit Judicial Council has voted, "in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits."

The complainant alleges that the district judge, who presided over the complainant's criminal trial on firearms charges, unlawfully enhanced complainant's sentence and, thereby, committed "plain error." The complainant details the chronology

of his criminal proceeding, including the sentence imposed by the district court and his subsequent unsuccessful petitions for habeas relief. The complainant argues that, in reliance on perjured testimony, the judge imposed an enhanced sentence for a crime with which complainant was not charged.

The complainant then alleges that each of the identified appellate judges neglected to recognize or correct the district court's error in ruling on complainant's multiple petitions for post-conviction relief. Complainant asserts that one appellate panel failed to recognize complainant's newly discovered evidence, and that another improperly stated that complainant sought to vacate his conviction when it was only the sentence enhancement that complainant disputed. Complainant concludes that the circuit judges have engaged in misconduct by "keeping [complainant] unlawful[ly] incarcerated because of a plain error in his sentencing . . . ."

The misconduct complaint is not cognizable. The complainant does not purport to submit evidence of improper motive on the part of any of the subject judges. He mistakenly argues that, because the misconduct complaint "is directly related to the merits of a decision or procedural ruling, . . . [it] is in conformity with [28 U.S.C.] § 351(a)." In fact, the opposite is true; a misconduct complaint that is based only on a litigant's disagreement with the substance of rulings issued in a case does not state a claim under the misconduct statute.

Cognizable misconduct "does not include an allegation . . . that calls into question the correctness of a judge's ruling . . . ." Rules of Judicial-Conduct, Rule 3(h)(3)(A). The

present misconduct complaint and the reviewed record of complainant's litigation are devoid of any evidence of improper judicial motivation - either in connection with the complainant's underlying conviction and sentence, with his appeal or with respect to any of his petitions for post-conviction relief. Accordingly, the complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

For the reasons stated, Complaints Nos. 01-11-90019, 01-11-90020, 01-11-90021, 01-11-90022, 01-11-90023, 01-11-90024, and 01-11-90025 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C).

9/14/11

Date

Sandra L. Lynch

Chief Judge Lynch