

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90026

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 20, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge was biased against complainant when, almost 18 years ago, the judge sentenced complainant to life in prison, after a jury convicted him on drug and firearms charges.

The complainant alleges that two incidents of alleged police misconduct unrelated to complainant's conviction and sentence undermined the judge's impartiality in presiding over the complainant's proceedings. First, complainant asserts that the judge testified in a state court proceeding that an individual had been present in federal court at a particular time. A newspaper report states that the judge provided an alibi for someone who had been wrongfully charged with selling narcotics. This was said to have happened a year

before the complainant's trial and conviction. The complainant infers that, as a result of this matter, the judge provided alibi evidence, and infers from that that the judge "knew about the illegal activities of the police agents before [complainant's] trial."

Complainant next alleges that, several years after complainant's conviction, the judge learned that one of the police agents who had been involved in complainant's arrest and had testified against him at trial was successfully sued for civil rights violations in another unrelated police misconduct matter. While this incident came to light after the complainant was initially sentenced, complainant contends that the judge should have "change[d] his position" on complainant's sentence when complainant raised the issue in a subsequent habeas petition.

The complainant posits that the judge's alleged awareness of these two instances of alleged police misconduct - one prior to complainant's trial and one later concerning a witness involved in complainant's prosecution - somehow created a "conflict of interest" that necessitated the judge's recusal from complainant's proceedings. The complainant adds that, in addition to impacting his original sentence, this conflict caused the judge to improperly deny all of complainant's post-trial motions and pleadings.

The misconduct complaint is baseless and the inferences from which bias is asserted are nonsensical. The reviewed record - consisting of the misconduct complaint, and the dockets, pleadings and orders in the complainant's numerous proceedings - demonstrates that complainant has, over the years, repeatedly sought to challenge his

conviction and sentence.¹ Although, the complainant obtained modification of his initial conviction, he was less successful in subsequent challenges to his sentence. Complainant has one appeal pending challenging the district court's denial of a motion.

The misconduct complaint and the reviewed record of complainant's cases provide no indication of any relationship whatsoever between either of the two alleged instances of police misconduct and the complainant's case. Further, addressing the information which came to light later, the court, in ruling on complainant's habeas petition, observed that the alleged police misconduct was "remote and irrelevant to the [complainant's] conduct." The court further noted that the officer subsequently charged with wrongdoing had been one of many to testify against the complainant at trial and that the officer's misconduct was completely unrelated to complainant's case.²

As there is no information suggesting that the judge was influenced in handling the complainant's case(s) by either of the two cited instances of alleged police misconduct, the misconduct complaint is dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B). See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(D).

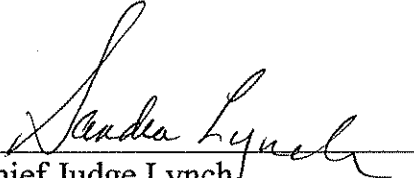
¹Complainant states that he did not file the misconduct complaint, until "after 18 years in prison" because he was not fully informed of the law, and because he had "hope that the Judge . . . some day would change his attitude . . . and re-sentence [complainant] to a reasonable and fair sentence."

²The court's orders in the habeas petition indicate that two of the many witnesses who testified against complainant were allegedly involved in wrongdoing; complainant only references one such witness in his misconduct complaint.

As the judge's alleged testimony before the complainant's trial in a wholly unrelated matter is not remotely indicative of a conflict of interest or other misconduct on the part of the judge, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A). Finally, as there is no evidence of bias, insofar as the misconduct complaint is based upon complainant's disagreement with the substance of the court's rulings, including the original sentence and subsequent orders, it is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B).

For the reasons stated, Complaint No. 01-11-90026 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

9/20/11
Date


Chief Judge Lynch