

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90043 AND 01-11-90044

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 15, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that two district judges engaged in misconduct while presiding over the complainant's civil case.

The complainant alleges that the first judge improperly delayed ruling on complainant's motion for a temporary restraining order (TRO). The complainant asserts that the court's order denying the motion was "deceptive" and "backdated." Complainant adds that the "denial of justice by delay is an ancient pattern of illegal power" that mooted complainant's ability to attain a meaningful remedy by appeal or otherwise. Complainant infers that the judge is "acting in concert with other government actors" to undermine complainant's interests.

With respect to the second judge, complainant alleges that clerk's office staff told the complainant that, in the first judge's absence, the second judge would rule on complainant's "emergency matters" Complainant asks that both judges be disciplined and removed from the complainant's case.

The misconduct complaint is baseless. First, the judicial misconduct complaint procedure does not afford an avenue for removing a judge from a case or for obtaining other relief in a pending case. See 28 U.S.C. § 354(a)(2), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 20(b).

Moreover, absent illicit judicial motivation, "an allegation about delay in rendering a decision or ruling" is not cognizable. Rules of Judicial-Conduct, Rule 3(h)(3)(B). The reviewed record - including the misconduct complaint, as well as the docket, complainant's pleadings, and the court's orders - provides no facts indicative of bias or wrongdoing by either of the judges. The record indicates that the first judge denied complainant's motion for a TRO several weeks after it was filed on the grounds that it was "largely incomprehensible" and because it was unclear whether the court had jurisdiction. The judge noted that the complainant would retain the right to renew his motion for injunctive relief with appropriate notice to the opposing parties after service had been completed.

There is no information suggesting that the judge was conspiring "with other government actors," seeking to deceive the complainant, or otherwise improperly motivated in ruling on complainant's motion. Nor are there any facts supporting the

contention that the order was misdated, intentionally or otherwise.

As there is no evidence of bias or judicial impropriety, the claim of delay is "excluded as merits-related." Rules of Judicial-Conduct, Commentary on Rule 3. Accordingly, the complaint against the first judge is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

As to the other judge, the assertion that staff made a statement to complainant concerning this judge's participation in the case is both uncorroborated and not suggestive of misconduct. As there is no indication that this judge took any part in the disposition of complainant's case, let alone acted improperly, the misconduct complaint against the second judge is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaints Nos. 01-11-90043 and 01-11-90044 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).

12/15/11

Date

Sandra L Lynch

Chief Judge Lynch