

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-12-90005

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MARCH 15, 2012

Complainant, a litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct while presiding over the complainant's habeas corpus proceeding.

This is complainant's second complaint against this district judge concerning the same case. In December 2005, complainant filed Complaint No. 419 alleging that the judge neglected to adequately and impartially review complainant's submissions, issued erroneous orders, and should be disqualified. Then Chief Judge Boudin dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See Boudin, C.C.J. Order, In Re Complaint No.

419, February 13, 2006. The Judicial Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re Complaint No. 419, May 30, 2006.

This second complainant concerns the judge's decision not to reopen the case, the handling of which was the subject of the first and frivolous misconduct complaint. In fact, the judge's decision in the case was affirmed on appeal. This complaint alleges that the judge is biased and has denied complainant the "redress" to which he is entitled in federal court, wrongfully ignored complainant's recent submissions, including the evidence of complainant's "actual innocence" that they contain. Complainant concludes that, as a result, the judge has improperly denied complainant's recent motions. Finally, complainant alleges, without support, that the motions to reopen his case and for relief from judgment were not docketed for almost three months after they were filed.

The misconduct complaint is frivolous and not cognizable. Complainant's proceeding was terminated over six years ago, both in the district court and on appeal. Over the past six months, complainant has filed a number of motions seeking to reopen the proceedings and obtain relief from judgment, all of which the judge promptly denied. In so doing, the judge explained that there was no information in the complainant's recent submissions that warranted a modification of the court's previous decision.

As the misconduct complaint derives exclusively from complainant's disagreement with the judge's recent orders denying complainant's requests for relief, it is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct and

Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(B). Beyond that, there is not one iota of support for the claims that the judge neglected to review complainant's filings, was biased, or engaged in other wrongdoing. The misconduct is, therefore, dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

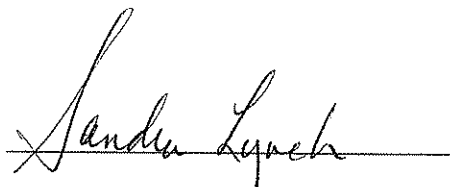
The claim of docketing delay is false; the complainant's motions were docketed on the date they were received by the court. Even if there had been an error, a clerical error would not alone indicate judicial wrongdoing. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 3.

For the reasons stated, Complaint No. 01-12-90005 is 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).

Finally, complainant is warned that the continued filing of frivolous misconduct complaints may precipitate an order restricting the filing of further complaints, in accordance with Rule 10(a) of the Rules of Judicial-Conduct.

March 15, 2012

Date

A handwritten signature in cursive script that reads "Sandra Lynch". The signature is written in black ink and is positioned above a horizontal line.

Chief Judge Lynch