

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90023

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 26, 2012

Complainant, a criminal defendant, filed a complaint, under 28 U.S.C. § 351(a), against the district judge who presided over complainant's jury trial and sentencing. Complainant alleges that the judge was biased in favor of the prosecution because the judge denied complainant's request for a continuance on the eve of trial in order to obtain new counsel and ruled against complainant on several matters.

Complainant also alleges that the judge wrongfully denied complainant's request for the judge's recusal. Complainant maintains that the judge's recusal was required because of a prior professional relationship that the judge had had with complainant's father. This failure to recuse is said to demonstrate bias. Complainant adds that the judge made erroneous evidentiary rulings, gave improper jury instructions, and imposed an

excessively long sentence on complainant.

The misconduct complaint is baseless. The reviewed record - including the misconduct complaint and the docket, pleadings, and orders issued in the case, as well as the audio recordings of the relevant proceedings - lend no support to the allegations. To the contrary, the audio recordings of the pretrial proceedings demonstrate that the judge showed great patience in responding to complainant's untimely request for a trial continuance in order to retain new counsel. On the day of the jury's empanelment, the court listened in full to each of complainant's objections to his lawyer. The judge responded to each issue, and observed that counsel was providing more than competent representation, including the filing of several successful motions to suppress on complainant's behalf.¹ The judge determined that complainant was seeking to delay the trial, and advised complainant that jury selection would proceed on schedule.

With respect to the complainant's request for the judge's recusal, the judge explained that complainant's father had briefly been a client of the judge's many years earlier, before complainant had been born, and that the judge had met the complainant's father only briefly then and in court. Explaining that there was no conflict of interest or other grounds for recusal, the judge denied complainant's request to withdraw.

Complainant does not show why this brief representation decades earlier would create any

¹This attorney was complainant's second. Complainant had dismissed his first attorney some months earlier, on the ground that he had been conspiring with the prosecution, and it had taken complainant several months to retain replacement counsel.

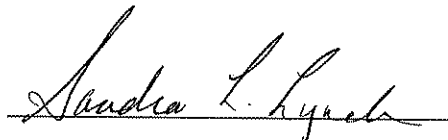
conflict of interest. Further, there is no evidence that this decision was improperly motivated or any other information in the reviewed record indicative of judicial bias or prejudice. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

Much of the misconduct complaint derives from the complainant's disagreement with the court's rulings - concerning the trial schedule, counsel, recusal, jury instructions, evidence and sentencing. That disagreement is not cognizable as a misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rules 11(c)(1)(B), and 3(h)(3)(A) ("Cognizable misconduct . . . does not include an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more is merits-related.")

For the reasons stated, Complaint No. 01-12-90023 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).

11/26/12

Date



Chief Judge Lynch