

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-13-90004

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: MAY 23, 2013

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Complainant, a criminal defendant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct while presiding over complainant's prosecution. The complainant contends that the judge exhibited bias in favor of the government by delaying in ruling on an number of motions, neglecting to report attorney misconduct, treating as "valid" a motion to dismiss that counsel had filed against complainant's wishes, and improperly allowing the government's motion to dismiss the indictment without prejudice. Complainant contends that the judge's mishandling of the case violated Canons 1, 2 and 3 of the Code of Conduct for United States Judges.

In the present matter, a review of the record - including the misconduct complaint, the docket, and relevant pleadings, orders and hearing transcripts from complainant's case

- demonstrates no violation of the Code of Conduct, let alone a cognizable misconduct complaint. A violation of the Code of Conduct for United States Judges may inform consideration of judicial misconduct complaints, under 28 U.S.C. § 351, *et. seq.*, but a violation of the Code does not necessarily constitute judicial misconduct under the statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3.

Complainant first alleges that the judge delayed in ruling on a motion to appoint new counsel and then a motion to return illegally seized property because the judge "could not make the hard decision of going against the government." The allegations misrepresent the record. The reviewed record indicates that the judge allowed these motions the day after they were filed, ordered the appointment of new counsel and continued the trial accordingly.

Ten days after new counsel was appointed, complainant again moved to dismiss his attorney and this time asked to appear pro se. The judge promptly held a hearing and again heard from complainant in full. The complainant argued that he objected to a motion to dismiss that counsel had filed on complainant's behalf because dismissal of the case would deprive complainant of his right to "expose the government misconduct" underlying the prosecution's case against him. The judge took complainant's motion to proceed pro se under advisement and determined that the motion to dismiss that complainant's counsel had filed was not ripe for decision.

Shortly thereafter, the government moved for dismissal of the case without prejudice. The court allowed the government's motion over complainant's objection that dismissal would prevent him from pursuing a claim he wished to pursue of government misconduct. In so doing, the judge explained that the "defendant has other avenues and remedies to seek redress for any alleged government misconduct. He is mistaken that the defense against criminal charges is his only means, or an appropriate means of doing so. The court discerns no bad faith in the motion to dismiss."

The reviewed record provides no evidence whatsoever that the judge was biased or engaged in any other wrongdoing in connection with the complainant's case. The judge gave complainant a full opportunity to explain the conflict he had with each of the two attorneys appointed to represent him and allowed complainant's first request for the appointment of new counsel. The court took complainant's motion to dismiss his second attorney under advisement because the judge questioned complainant's ability to adequately represent himself in light of the argument complainant was presenting. There is no evidence indicating that the judge was biased, neglected to report attorney misconduct, or engaged in any other wrongdoing. Accordingly, the complaint is 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).

Where, as here, there are no facts suggestive of improper judicial motivation, the remaining claims - that the judge delayed in ruling on complainant's motions, mishandled

the motion to dismiss filed by complainant's counsel, and wrongfully dismissed the case on the government's motion - are dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Rules of Judicial-Conduct, Rules 3(h)(3), and 11(c)(1)(B).

For the reasons stated, Complaint No. 01-13-90004 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).

5/23/13

Date

Sandra Lynch

Chief Judge Lynch