

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-14-90005 and 01-14-90006

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JULY 14, 2014

Complainant, a pro se criminal defendant, filed a complaint against two district judges, alleging violations of the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a). Complainant alleges that Judge No. 1 engaged in misconduct during the several months period that he presided over complainant's criminal case. Complainant alleges that the other district judge, Judge No. 2, engaged in conspiracy with Judge No. 1 and others, and issued improper orders. The allegations against both judges are baseless and are not cognizable.

These are complainant's third and fourth baseless misconduct complaints. Last year, complainant filed a complaint against the district judge and magistrate judge who had previously presided over complainant's criminal case. Complainant had alleged that the magistrate judge improperly allowed the introduction of information into the record,

denied complainant's request to present witness testimony, and denied complainant bail in violation of complainant's Constitutional rights. I dismissed that complaint as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as conclusively refuted by the record, pursuant to 28 U.S.C. § 352(b)(1)(B). See Order, Lynch, C.C.J., In Re: Complaint Nos. 01-13-90013 and 01-13-90014, December 4, 2013. The First Circuit Judicial Council affirmed the order of dismissal. See Order, Judicial Council of the First Circuit, In Re: Complaint No. 01-13-90013, March 20, 2014.

In the other misconduct complaint, complainant alleged that the district judge improperly ordered complainant to undergo a psychological evaluation and that the judge's handling of the case was affected by a personal matter. I dismissed the allegations as not cognizable and as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and 28 U.S.C. § 352(b)(1)(A)(iii), respectively. See Order, Lynch, C.C.J., In Re: Complaint Nos. 01-13-90013 and 01-13-90014, December 4, 2013. Complainant did not file a petition for review of the order dismissing the complaint against the district judge.

Judge No. 1

Complainant presently alleges that, while presiding over his criminal prosecution, Judge No. 1 improperly appointed his friend and "future applicant in becoming a magistrate [judge]" as complainant's standby counsel. Complainant adds that the judge had ex parte communications and discussed privileged information with standby counsel. Complainant asserts that the judge wrongfully issued an order authorizing standby counsel to file any motion deemed necessary on behalf of the complainant, and concludes

that the judge interfered with the complainant's "right to counsel of choice."

Complainant further asserts that Judge No. 1 conspired with the government and with standby counsel to violate complainant's Constitutional rights. Complainant contends that, as part of the conspiracy, the judge purposefully ignored complainant's filings, which resulted in a violation of complainant's right to a speedy trial. Complainant also contends that the judge improperly denied complainant access to medical treatment.

Complainant adds that the court and the government have consistently failed to provide complainant with copies of relevant documents. Complainant includes allegations of wrongdoing by prison officials regarding his mail delivery and access to medical treatment. Finally, complainant contends that the court generally lacks jurisdiction to prosecute complainant.

A review of the record, including the docket, pleadings and orders issued in complainant's criminal prosecution indicates that, during the few months that Judge No. 1 presided over complainant's criminal case, he held a scheduling conference, at which he appointed standby counsel and directed the Clerk to provide the complainant with the government's filings. The judge later ruled on a motion, and issued an order setting the trial date and authorizing standby counsel to file on behalf of complainant "any motions deemed necessary."

Complainant offers no information in support of his conclusory claims that the judge was biased in appointing standby counsel, had an improper personal relationship with standby counsel, engaged in improper ex parte communication with him, or divulged

privileged information to him. Nor does the reviewed record of the case contain any such evidence. Accordingly, these claims are dismissed as wholly unsupported, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

There is likewise no evidence that Judge No. 1 conspired with standby counsel or others to violate complainant's rights, intentionally ignored complainant's filings, denied complainant medical treatment or engaged in any other wrongdoing while presiding over the case. These claims are also dismissed as lacking any factual foundation. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The record indicates that complainant filed a plethora of motions, affidavits and notices during the several months that Judge No. 1 presided over the case, one of which pertained to complainant's medical care. The fact that the judge did not rule on all of these motions during the short time he presided over the case is not indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B), and Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

Where, as here, there is no evidence of improper judicial motivation, complainant's disagreement with the orders issued by the judge appointing standby counsel and authorizing counsel to file motions on complainant's behalf does not support a claim of cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). The same holds true for the court's assertion of jurisdiction over the case.

Finally, complainant's alleged issue with the receipt of documents from the clerk's office and the government does not indicate misconduct by the presiding judge. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Judge No. 2

Complainant first alleges that Judge No. 2 wrongly accused him of practicing law without a license in a criminal case unrelated to complainant's prosecution. Complainant maintains that Judge No. 2 and Judge No. 1 conspired to intimidate the defendant in this case by preventing complainant from translating the defendant's pleadings into English. Complainant adds that Judge No. 2 conspired with the Department of Justice and prison officials to improperly seize legal documents from the complainant.

A review of the record in the criminal case over which Judge No. 2 presided indicates that, on multiple occasions, complainant had filed pleadings as defendant's "counsel." Explaining that complainant was not authorized to practice law, Judge No. 2 ordered complainant to stop filing documents as "counsel" on behalf of the defendant. As there is no information indicating that the judge was improperly motivated in issuing these orders or otherwise sought to intimidate the complainant or anyone else, complainant's disagreement with these orders does not constitute cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), and Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge - without more - is merits-related").

Complainant's contention that Judge No. 2 conspired with others to improperly

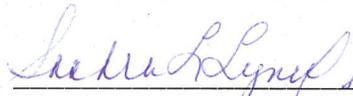
seize legal documents from the complainant is presented without any basis in fact and should be dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Finally, in a multitude of supplemental filings, complainant reiterates the claims in the pending complaints and those that were the subject of his previously dismissed complaints. Complainant also makes allegations against the district judge who is currently presiding over his criminal case. As this judge is not the subject of either of the pending matters, these allegations are not addressed. Complainant's claims of wrongdoing by attorneys, other government agencies or prison officials are not cognizable in the present context. See 28 U.S.C. § 351, *et. seq.*, and Rules of Judicial-Conduct.

For the reasons stated, Complaints Nos. 01-14-90005 and 01-14-90006 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), 11(c)(1)(C), and 11(c)(1)(D).

July 14, 2014

Date



Chief Judge Lynch

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-14-90005 and 01-14-90006

SHOW CAUSE ORDER

ENTERED: JULY 14, 2014

You have now filed four judicial misconduct complaints each of which has been found to be patently without merit. These complaints are Nos. 01-13-90013, 01-13-90014, 01-14-90005, and 01-14-90006.

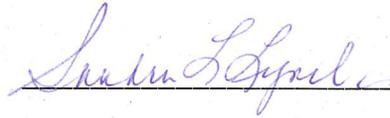
Pursuant to the order of delegation issued by the Judicial Council on October 4, 2001 and Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), you are directed to show cause why an order should not be entered by the Judicial Council precluding you from filing any new judicial misconduct complaints without prior permission of the Judicial Council. If you oppose such an order, you may file a written opposition with the Office of the Circuit Executive, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Suite 3700, Boston, Massachusetts 02210, which must be received within 35 days of the date of this order.

Until this show cause proceeding is resolved, any new judicial misconduct complaint that you file will be held in abeyance. If an order of preclusion is entered, any such new complaint will be returned to you without prejudice to your right to resubmit it

after obtaining prior permission from the Judicial Council. This order does not affect your rights under the Rules of Judicial-Conduct in the pending matters.

July 14, 2014

Date

A handwritten signature in blue ink, appearing to read "Susan Lynch", is written over a horizontal line.

Chief Judge Lynch
for the Judicial Council