

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINTS NOS. 01-14-90007 and 01-14-90010

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: JUNE 3, 2014

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Complainants are two attorneys, one of whom represents the other and each of whom has filed a complaint, under 28 U.S.C. § 351(a), against the same district judge. Complainant No. 1 represents the plaintiffs in a civil case over which the judge presides. The plaintiffs themselves are not complainants. Complainant No. 2 was retained to represent Complainant No. 1 in a show cause matter that arose in the case. Because the complainants' allegations arise out of the same proceeding, they are addressed concurrently. Although many of the claims concern rulings issued in the course of the case which are not an appropriate subject of a misconduct complaint, both attorneys have chosen to bring them as such. Further, I find the charges to be baseless and often flatly contradicted by the record.

The complainants allege that the judge abused his authority by issuing an order after finding numerous derelictions by Complainant No. 1 requiring plaintiff's counsel, Complainant No. 1, to show cause why he should not be removed from the case for failure to comply with discovery requests and pay ordered sanctions.<sup>1</sup> The complainants contend that, in initiating and handling this matter, the judge was hostile and disrespectful of counsel and, thereby, violated Canon 2(A) (requiring judges to show respect for the law) and Canon 3A(3) (requiring judges to be "patient, dignified, respectful and courteous" while interacting in an official capacity) of the Code of Conduct for United States Judges. Complainants' respective allegations are detailed below.

#### Complaint No. 1

Complainant No. 1 alleges that, at a status conference at which only he, defense counsel and the judge were present, the judge "made a series of inappropriate statements" regarding complainant's divorce and resulting "financial circumstances" that amounted to a "personalized attack" of complainant.<sup>2</sup> The status conference had been convened at defendant's request, with Complainant No. 1's consent, to address complainant's failure to comply with discovery deadlines and pay ordered sanctions. Per normal custom, the conference was not recorded and no request was made to record it. Complainant contends that the court had not set a date by which the sanctions were to be paid.

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<sup>1</sup>At the time of this writing, the judge has not ordered counsel removed from the case but has asked counsel to brief the relevant legal issues.

<sup>2</sup>The judge states that his case manager was present at this conference, as well.

Complainant asserts that the judge "berat[ed]" complainant, raised his voice, and engaged in "unwarranted, unprofessional, and abusive conduct that both embarrassed and humiliated [complainant] during the conference."<sup>3</sup> As explained below, this is denied by both the judge and the defendant's counsel present at the status conference.

Complainant No. 1 further maintains that, during the conference, the judge improperly threatened to report complainant to the attorney disciplinary board, "mocked" complainant's representations about a settlement in another case, and accused complainant of believing that the "'rules' did not apply to [him]." Complainant argues that the judge violated the governing rules by "failing to promote settlement, refus[ing] to refer the matter to mediation" as requested by the parties, violating complainant's "right to due process" and acting "contrary to his ethical obligations." This too is denied.

Complainant No. 1 additionally alleges that the judge's behavior at this conference prejudiced the plaintiffs' case because the judge articulated arguments "designed to instruct [defense counsel] not to negotiate or attend mediation." Complainant adds that the judge "scuttled hopes for a mediated resolution of the case" by identifying all of the weaknesses in presenting the case to a jury. Complainant concludes that the conference was "nothing more than a Federal Judge and a defense lawyer bullying Plaintiffs'

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<sup>3</sup>Complainant initially alleged that, at the time of the conference, the court had not been notified on the record that the ordered sanctions remained unpaid but had "somehow" acquired this information. In an addendum to the misconduct complaint, complainant retracted this statement and acknowledged that defense counsel had informed the court of complainant's noncompliance in its motion requesting a status conference.

counsel." This is denied.

Complainant No. 1 next asserts that, after the conference, the judge improperly contacted a local lawyer assistance program and reported that he was "concerned" about complainant. Complainant notes that, several months earlier, he had told the judge privately that he was working with this program in dealing with his divorce. Complainant concludes, however, that, after the judge contacted the program, "he devised his own process, inconsistent with the Local Rules, to address his beliefs about [complainant's] perceived failure to pay sanctions . . . ."

Finally, Complainant No. 1 maintains that the order requiring complainant to show cause why he should not be removed as plaintiffs' counsel violated the local rules by denying counsel an opportunity to be heard before being removed from a case. Complainant argues that the order improperly shifted the burden onto complainant to prove that he is able to represent his clients' interests.

#### Complaint No. 2

Complainant No. 1 retained Complainant No. 2 to represent him in the show cause matter. Complainant No. 2 filed a motion to vacate the show cause order issued in the case and subsequently filed a misconduct complaint against the judge in Complainant No. 2's own name. This second misconduct complaint alleges that the judge lacked authority to initiate the show cause matter, that he mishandled complainant's requests for a continuance of the show cause hearing and that he was hostile and abusive during a

telephone conference.

Complainant No. 2 reiterates her client's objections to the show cause order. She adds that it presupposes counsel's incompetence and denies him due process because the "accuser is also the fact finder . . . ." Complainant No. 2 also argues that this order prejudices the plaintiffs' right to retain counsel of their choice. Complainant includes affidavits by three of the four plaintiffs in the case stating that they do not want the judge to remove their attorney, that to do so would hurt their case, and that they want the case heard by an "impartial Judge who will treat [the plaintiffs and their] lawyer with respect."<sup>4</sup> Complainant adds that this "travesty" has impacted Complainant No.1's emotional and physical well-being, as "he feels, rightfully that he is being hunted."

Complainant No. 2 further objects to two subsequent orders issued by the court. In the first of these, issued several days after the show cause order, the court required both parties to submit a memorandum a week before the scheduled hearing detailing the efforts defendant had made to obtain discovery from the plaintiffs and their counsel, Complainant No. 1. Complainant No. 2 contends that this order was unethical because it required Complainant No. 1 "to submit a statement that violates attorney-client privilege." She asserts that this order "seems to suggest the Court has already determined that [Complainant No. 1] cannot represent [his clients'] interests." Complainant No. 2 surmises that, by forcing Complainant No. 1 to divulge privileged communications, the

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<sup>4</sup>Complainant states that the fourth plaintiff is dismissing the case for unrelated reasons.

court has left counsel with the "'Hobson's choice,'" of "end[ing] his career by potentially burying his client" or "bury[ing] his career by falling on the sword himself, to protect his clients . . . ." Complainant No. 2 concludes that, in pursuit of this unlawful inquiry into counsel's competence, the judge "creates a new rule in [the] unsanctioned proceeding," which demonstrates the judge's "investment" and "goal," to "destroy" Complainant No. 1. Complainant No. 2 has filed in the case a motion to strike this order, articulating these same concerns.

In response, the court issued a subsequent order in which it explained that its previous order (requiring counsels' memoranda on discovery efforts) does not require the disclosure of confidential communication. In this order, the judge said that counsel is not asked to divulge privileged information but to disclose all contacts between counsel that "bear on defendant's effort to obtain [the relevant ] discovery . . . ." Asserting that the two orders are inconsistent, Complainant No. 2 argues that the judge "moved (or hid) the ball," requiring Complainant No. 1 to "'take the bullet' for his client" by limiting his ability to defend himself. Complainant No. 2 concludes that the judge made a series of "new decision[s] to try to fix his prior bad decision . . . [in order] to . . . justify his inquiry [in] direct, unabashed, naked violation of . . . local Court Rules . . . undoing centuries of progress in making a system of justice that is modelled [sic] by emerging democracies around the world."

Complainant No. 2 next alleges that, in retaliation for the filing of Complainant

No. 1's misconduct complaint, the judge mishandled complainant's requests for a continuance of the scheduled hearing. The relevant chronology is as follows: The day after the court entered the show cause order and scheduled the hearing, Complainant No. 2 entered an appearance on behalf of Complainant No. 1 and filed a motion to vacate the show cause order and for the judge's recusal. In this motion, counsel asserted essentially the same allegations as presented in Complainant No. 1's misconduct complaint.

About 10 days before the scheduled hearing, Complainant No. 2 filed an unopposed motion for a continuance of the hearing on the ground that she had a conflicting state court matter which, under the governing rules, took priority over the federal court hearing. The court promptly granted the motion and rescheduled the hearing for the day after it had been originally scheduled. When Complainant No. 2 notified the court that she had a conflict on this date, as well, the court convened a telephone conference to address the scheduling issue.

Complainant No. 2 objects to the fact that the court gave "extraordinary priority" to this matter, as it rescheduled the hearing for just one day later than it was originally scheduled. From this, she infers and alleges that the judge was retaliating against the filing of her client's misconduct complaint by seeking to expeditiously address and resolve the matter himself.

With respect to the telephone conference itself, which has been transcribed, Complainant No. 2 alleges that the judge was "rude and abrupt, and at one point sounded

like he was doing something else . . . ." Complainant asserts that the judge had a "sarcastic and angry demeanor," and "asked stupid questions" which "felt" to complainant like she was being "mocked." Moreover, complainant did not "appreciate that the Judge was going to be so dismissive and disrespectful of [her] other obligations in State Court." Complainant objects to the fact that the judge rescheduled the hearing for an evening after complainant finished in state court. Complainant adds that the "Judge seem[ed] to not know the case, . . . seemed frustrated that he couldn't rattle [complainant and was] certainly fueled by something personal." Complainant states that the judge "escalated and began to rant," lacked patience, was abusive, disrespectful and harbored an inappropriate and unprofessional demeanor.

Complainant No. 2 also objects to the fact that the court allegedly requested Complainant No. 1 to participate in the telephone conference, though the record indicates that he did not ultimately do so.

Complainant No. 2 next objects to the court's failure to record the telephone conference by audio, as opposed to by stenographic, means. She asserts that, in response to complainant's request, the case manager confirmed by email that the telephone conference would be so recorded. Complainant adds that, when she later inquired as to the court's failure to do so, the clerk reported that complainant's request had been unclear.

Complainant concludes that the judge's behavior is "irrational" and that the judge is "manufacturing a process void of due process," requiring the "invasion of the oldest



recognized privilege" with the intent of removing Complainant No. 1 from the case. "It is the true definition of a 'kangaroo court.'"

### Inquiry and Analysis

The available information does not demonstrate a violation of the Code of Conduct for United States Judges, let alone judicial misconduct.<sup>5</sup> In conducting an inquiry, pursuant to the Rule 11 of the Rules of Judicial-Conduct, my staff and I have thoroughly reviewed the complainants' allegations and the court record (including the docket, pleadings and court orders), obtained a response from the judge, and communicated with relevant court staff. See also Rules of Judicial-Conduct, Commentary to Rule 11 (providing that "the chief judge or a designee may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may review transcripts or other relevant documents" in determining what action to take in response to a misconduct complaint). This inquiry has elucidated no information even suggesting that the district judge was improperly motivated or otherwise biased in handling this matter.

First, the judge reports (and complainants do not dispute) that the judge had no prior relationship with either complainant or any of the parties, and had only a few isolated professional contacts with defense counsel. Nonetheless, Complainant No. 2

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<sup>5</sup>A violation of the Code of Conduct for United States Judges may inform consideration of judicial misconduct complaints but 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.

surmises that the judge has sought to "destroy" her client, Complainant No. 1. It is unclear whether she infers that the judge harbored this "goal" as a result of Complainant No. 1's mishandling of the case or purely in retaliation for the filing of his misconduct complaint. Regardless, there is no evidence for either. To the contrary, the reviewed record suggests that the judge has endeavored only to protect the interests of the parties and efficiently resolve the case. Complainants' specific allegations are addressed below.

The in chambers conference that forms the basis of Complainant No. 1's misconduct complaint took place after Complainant No. 1 had consistently failed to produce requested discovery and respond to court orders for nearly a year. The magistrate judge assigned to the case had, over the course of this year, allowed the defendant's motions to compel discovery and ordered Complainant No. 1 to supply the requested information or risk the imposition of sanctions. Complainant No. 1 failed to comply with orders of more than one district judge.

Defense counsel ultimately filed a motion to dismiss and request for fees for failure to produce discovery and comply with court orders. The court issued an order proposing to dismiss the case with prejudice unless Complainant No. 1 demonstrated why a lesser sanction should be imposed. In response, Complainant No. 1 explained personal issues his clients were facing, as well as his temporary administrative suspension from the practice of law "due to a dispute related to an acrimonious divorce."<sup>6</sup>

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<sup>6</sup>The record indicates that Complainant No. 1 had been temporarily administratively suspended from the practice of law for failure to comply with a legal order issued in connection

During a transcribed motion hearing, the judge declined to dismiss the case but ordered Complainant No. 1 to pay the costs and fees associated with defendant's need to compel discovery. During this almost hour long hearing, the court recounted defendant's fruitless attempts to obtain discovery and Complainant No. 1's failures to communicate with opposing counsel and the court. The judge explained that he was "not approaching this with any sense of anger" but with "bewilderment that any responsible lawyer would place himself in this position." Complainant No. 1 admitted that his failures to communicate were not due to ignorance of the governing rules and were not "the way that he intended to be practicing law . . . ." Complainant No. 1 again raised the issue of his divorce but noted that it was not as an "excuse" for his behavior. The judge stated that the court had no interest in complainant's personal matters except insofar as complainant sought to use them as a mitigating factor.<sup>7</sup> The court clearly articulated counsel's obligations moving forward, explaining that the court would have a "zero tolerance policy" that required Complainant No. 1 to prioritize the obligations associated with this litigation.

Three months later, defense counsel filed the assented to motion for a status

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with these personal matters.

<sup>7</sup>At the conclusion of this hearing, Complainant No. 1 requested an "in chambers conversation" with the judge "to discuss some of [his] personal issues and ways that [he is] addressing them." As there was no objection, the court agreed to speak with counsel in private. Again, it was Complainant No. 1 who raised the issue of his personal life with the court. The judge did nothing inappropriate.

conference, stating that "not much has changed," since the motion hearing. Defense counsel explained that Complainant No. 1 remained unable to adhere to court rules and deadlines and requested the court's assistance in moving the case forward. The conference was held in chambers, without a court reporter, as this was the "routine practice" for the court when asked to assist the parties in resolving issues informally and by agreement. It would have been unusual for such a conference to have been transcribed in general and especially where, as here, neither party requested it. There was no impropriety.

Both the judge and defense counsel deny that the judge was hostile, inappropriate, combative, raised his voice, "bullied," or engaged in a "personalized attack" of Complainant No. 1 during this meeting. The judge explained that, though he was concerned that complainant's clients would suffer as a result of counsel's lack of diligence and competence, he did not feel any "anger" towards Complainant No. 1. The judge further reported that it was immediately clear after the conference began that Complainant No. 1 was not prepared to respond to the discovery issues, but instead behaved as if the purpose of the conference was to facilitate settlement discussions.

With regard to the judge's demeanor during the conference, defense counsel stated, in a pleading filed in the case, that the judge did not raise his voice, act abusively or demonstrate a lack of integrity, impartiality or inappropriate temperament. Defense counsel stated:

At no time did the presiding Judge berate or loudly raise his voice to [Complainant No. 1]. Neither did the presiding Judge act abusively toward him. Neither did he demonstrate a lack of integrity, impartiality or inappropriate temperament. In fact, the presiding Judge was remarkably patient with [Complainant No. 1], who did not seem to understand or appreciate fully the severity of the situation.

Defense counsel added that he did not recall whether the judge indicated that Complainant No. 1 thought that the rules did not apply to him, as Complainant No. 1 alleges, and stated that the judge, contrary to the allegations, did not "articulate specific arguments designed to instruct [defense] counsel . . . not to attend mediation." Counsel added that the defendant "remains prepared to attempt to resolve the case through mediation at the appropriate time."

In the same pleading, defense counsel further observed that "[n]either the presiding Judge nor [defense] counsel bullied [Complainant No. 1]. The allegation is fiction . . . . There is a vast difference between being held accountable and being 'bullied.'" Finally, the defendant's attorney found "no legitimate basis for [the judge's] recusal . . . ."

The fact that both the judge and the witness flatly deny the claim that the judge was hostile or disrespectful during this unrecorded conference vastly undermines the viability of Complainant No. 1's allegations, and Complainant No. 1 provides no evidence any of his charges are true. That said, any frustration or impatience that the judge may have shown during this private meeting with both counsel - which has not been demonstrated - would not constitute a violation of the Code of Conduct or cognizable misconduct under the statute. Even if the judge had made the alleged statement that

Complainant No. 1 behaves as if the "rules did not apply to [him]," such a comment would not in this context constitute cognizable misconduct. See Boudin, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 444, January 23, 2007, at 4 (The expression of views by a judge, based on the record, and the tone maintained by a judge do not alone provide a basis for a finding of judicial misconduct.). See also Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 3-4 (A judge's admonishment of counsel in a published order did not constitute "egregious" or "hostile" behavior, under Rule 3(h)(1)(D) of the Rules of Judicial-Conduct), and Judicial Conference Committee on Codes of Conduct, Advisory Opinion 66, June 2009 ("Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality. . . . [E]xpressions of impatience, dissatisfaction, annoyance and even anger directed to an attorney or a party should not be confused with judicial bias.")

There is no assertion that the judge's views were based on anything beyond the record in the case. The dialogue at issue in the present matter was not "public" or even in front of complainant's clients. There is no support for the allegations of improper motive, "abuse" or any other impropriety on the part of the judge. Accordingly, these claims are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D) (providing for the dismissal of "allegations lacking sufficient evidence

to raise an inference that misconduct has occurred . . .").<sup>8</sup>

Complainant No. 1's related claims concerning the purported discussion at the conference about complainant's divorce and finances are equally unfounded. It was Complainant No. 1 who introduced the topics and related them to the case. Complainant No. 1 had, on two previous occasions, raised both matters in connection with his failures to fulfill his professional obligations.<sup>9</sup> On the present facts, it would be neither surprising nor inappropriate if the issues had come up at the conference and frank discussion of them in that context, if it had occurred, would not constitute misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Complainant No. 1's claim that the judge prejudiced the plaintiff's case, by instructing defense counsel to reject Complainant No. 1's overtures to mediate, is wholly unsupported. In the motion requesting the status conference, defense counsel explicitly noted that it was not clear that the plaintiffs could afford mediation. ("The parties have discussed the prospect of mediating this case early, but Plaintiff's counsel has expressed concern about his clients' apparent inability to fund their portion of the mediation.")

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<sup>8</sup>Dismissal following a limited inquiry is appropriate when the "complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge." Rules of Judicial-Conduct, Commentary on Rule 11. Dismissal is also appropriate where, as here, further investigation is incapable of establishing complainant's allegations. See id., *citing* Rule 11 (c)(1)(E).

<sup>9</sup>At the motion hearing several months earlier, the judge had explicitly sought to determine whether Complainant No. 1 considered the divorce relevant to his failure to comply with court orders and asked that he disclose information about it only insofar as he considered it a "mitigating factor." See supra, at 11, and nte. 7.

Defense counsel has since indicated on the record that the judge did not dissuade him from mediation and his client remains open to the possibility of mediation at the "appropriate time." The conclusion that the judge "scuttled hopes for a mediated resolution of the case" is baseless. See 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The judge acknowledges that, after the conference, he contacted a local lawyers assistance program. Complainant No. 1 had earlier informed the judge that he was seeking assistance for his problems. The judge explains that he did so out of concern for both complainant and his clients, and complainant offers no evidence to the contrary. This is not misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Nor was it misconduct for the judge to inform complainant that he was considering a referral to the attorney disciplinary committee. The record demonstrates that the judge had ample reason to be concerned about Complainant No. 1's ability to comply with his ethical and professional obligations. Far from being misconduct, it was entirely appropriate for the judge to inform counsel of this possibility. There is no evidence whatsoever that, in doing so, the judge was improperly motivated, excessively harsh or unreasonable in any respect. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(D).

Finally, both complainants claim that the order requiring Complainant No. 1 to



show cause why he should not be removed as plaintiffs' counsel was wrong and constitutes misconduct. This claim is simply not cognizable and baseless. The judge explained that, in his view, the cited case law supported the court's "inherent authority" to take measures to ensure that "justice is done" in a pending case and that this authority is distinct from the procedures identified in the local rules. The court added that if, after the issue is briefed, it determines that it has "misconstrued this authority," it will refer the matter to the disciplinary board.<sup>10</sup> Where, as here, there is no evidence that the judge was biased or improperly motivated, a claim that merely disputes the merits of a court's ruling is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse . . .").

In sum, the available information does not provide any evidence of wrongdoing on the part of the judge. At defense counsel's request, the court convened the unrecorded status conference to address Complainant No. 1's unremitting failures to competently litigate the case. No facts support the claim that, either during the conference or otherwise, the judge abused or personally attacked Complainant No. 1, made "personally derogatory remarks irrelevant to the issues," *cf.* Rules of Judicial-Conduct, Rule 3(h)(3)(A), raised any inappropriate topics of discussion, or otherwise acted improperly

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<sup>10</sup>The matter is still pending. See nte. 1, *supra*.

under the circumstances. Insofar as complainant disputes the judge's ruling on the scope of his authority over counsel in the case, this is a purely legal issue and does not, on the present facts, raise even a colorable question of misconduct. Accordingly, Complaint No. 1 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

Complainant No. 2's remaining allegations are both flatly contradicted by the record and are not cognizable. The exigency with which the court sought to schedule the show cause hearing is not indicative of illicit motivation. Complainant No. 1's motion to vacate the show cause order and for recusal was pending. This pleading contained the same allegations as Complainant No. 1's misconduct complaint. Nonetheless, Complainant No. 2 infers that, in retaliation for the filing of the complaint, the judge "intends to engage in discovery of his own misconduct complaint, and . . . resolve it himself . . . ." In fact, the court was obligated to rule on the motion for recusal (which raised precisely the same issues as the first misconduct complaint) before it could proceed with the case which, at the time, was scheduled for trial. Complainant's inference that, in expediting this hearing, the judge acted in retaliation for the filing of the misconduct complaint is baseless. See 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial-Conduct, Rule 11(c)(1)(D). Further, where, as here, there is no evidence of illicit judicial motivation, a claim that merely challenges the priority that a judge places on a particular matter is not

cognizable. See Rules of Judicial-Conduct, Commentary on Rule 3.

Nonetheless, the court summarily allowed Complainant No. 2's first motion seeking to continue the scheduled hearing, and rescheduled it for the following day. When Complainant No. 2 objected to this date, as well, the court convened the telephone conference for that afternoon to address the scheduling issue.

The transcript of the telephone conference conclusively refutes the allegations that the judge was hostile or disrespectful. The court noted that the complainant's first motion to continue had been granted and asked complainant to explain her conflict with the second proposed hearing date. Complainant explained that she had a conflicting state court matter on that date, as well, which took precedence over the federal hearing under the governing rules. The judge observed that the underlying case was currently scheduled for a trial, noted that the court was getting to the "limit of [its] patience" with the requests for continuances and suggested another date. Because Complainant No. 2 had state court hearings on that date, as well, the judge scheduled the matter for late afternoon but said that the hearing would go forward after business hours, if needed. Complainant No. 2 replied that this was "[u]nusual, but fair," and voiced her appreciation.

The judge was not abusive or disrespectful during this telephone conference. Nor did he "escalate[] and beg[in] to rant." These claims are false. As the court arranged the hearing around complainant's state court commitments, the assertion that the judge was "dismissive and disrespectful of [Complainant No. 2's] other obligations in State Court" is

also disproven by the record. These claims are dismissed accordingly, pursuant to 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial-Conduct, Rule 11(c)(1)(D).

That said, the judge was admittedly frustrated at complainant's repeated requests to postpone a matter that the court deemed to be pressing. Insofar as this frustration may have been reflected in the judge's tone, this is not misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A). See also Boudin, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 444, *supra*.

Since the record demonstrates that Complainant No. 1 did not participate in the telephone conference, any claim that the judge improperly required him to do so is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial-Conduct, Rule 11(c)(1)(D).

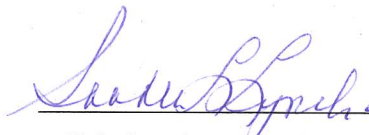
Complainant No. 2's disagreement with the court's two orders requesting information for the hearing also does not constitute a cognizable claim of misconduct. When complainant objected to the order requiring counsel to disclose the events relevant to the discovery requests on the grounds that it sought confidential information, the court issued a ruling clarifying that the court did not seek privileged communications between Complainant No. 1 and his clients, but instead wanted communications between counsel relevant to the issue. Complainant's inference that this last order was an insidious effort to "move the ball," instead of an attempt to clarify the scope of the court's demands is baseless. Accordingly, the claims are not cognizable because they do nothing more than

challenge the correctness of the court's rulings. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, with respect to Complainant 2's request to record the telephone conference, the record indicates that court staff told complainant by email that the conference would be "recorded." At the beginning of the conference, the judge stated: "I have a court reporter here recording the proceedings." The clerk has explained to Complainant No. 2 that the court's method of recording is stenographic and the hearing was recorded in accordance with court procedure. Complainant's objection to this is not indicative of judicial wrongdoing. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaints Nos. 01-14-90007 and 01-14-90010 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

June 3, 2014  
Date

  
Chief Judge Lynch