

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-19-90035 and 01-19-90036

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: SEPTEMBER 14, 2020

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Complainant, an incarcerated litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a magistrate judge and a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with his criminal case, over which the subject judges presided. The misconduct complaint is not indicative of misconduct, is baseless, is conclusively refuted by the record, and is not cognizable.

Complainant alleges that the magistrate judge exhibited racial bias by making a racially motivated credibility determination in recommending the denial of complainant's motion to suppress. Complainant alleges that the district judge was biased against complainant because of complainant's race and state of residence. Suggesting that the court tampered with the transcripts of the proceeding, complainant contends that the

district judge made a number of improper and racist statements at complainant's sentencing hearing.

Complainant alleges that the district judge neglected to review adequately the pleadings and record in the case, including the transcript of the suppression hearing before the magistrate judge, and surmises that, had the district judge read the record, the district judge would have dismissed the case.

Complainant asserts that the district judge deprived complainant of the effective assistance of counsel by denying his attorney's request to withdraw or appoint him under the Criminal Justice Act (CJA), and that the district judge had complainant's attorney "coerce" complainant into accepting a plea agreement, though he would have been found innocent at trial. Complainant further alleges that the district judge would not allow complainant's attorney to argue his case and told counsel to "sit down and shut up."

Complainant alleges that the district judge violated the Code of Conduct for United States Judges (Code of Conduct)<sup>1</sup>, had determined before sentencing that complainant would be incarcerated, and imposed an unreasonable sentence. Complainant requests that judicial

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<sup>1</sup> Complainant references Code of Conduct for United States Judges (Code of Conduct), Canon 1, which provides that "[a] judge should uphold the integrity and independence of the judiciary"); Canon 2, which provides that "[a] judge should avoid impropriety and the appearance of impropriety in all activities"); Canon 2A, which provides that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"); Canon 3, which provides that "[a] judge should perform the duties of the office fairly, impartially and diligently"); Canon 3A(3), which provides that "[a] judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity . . ."; and Canon 3C, which provides in part that, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . ."

notice be taken of the fact that the court lacked jurisdiction, that both subject judges recuse from his case, and that the district judge be removed from judicial service.

As an initial matter, the judicial misconduct procedure does not provide an avenue for much of complainant's requested relief, including taking judicial notice of purported facts, the recusal of a judge, or the removal of a judge where, as here, the allegations are unsubstantiated. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

The reviewed record, including the misconduct complaint and the docket of the relevant proceeding is devoid of any information suggesting that either judge was biased, violated the Code of Conduct, or otherwise engaged in misconduct in presiding over complainant's criminal proceeding.

The record indicates that complainant was arrested on the basis of a criminal complaint, and at a bond hearing, the magistrate judge released complainant subject to various conditions. Complainant filed multiple motions to modify those conditions, all of which the magistrate judge granted. A grand jury subsequently indicted complainant on different criminal charges.

Complainant filed a motion to suppress, on which the magistrate judge held a hearing where complainant and several prosecution witnesses testified. At the request of complainant's counsel, the magistrate judge allowed the parties to submit post-hearing briefs regarding witness credibility. Subsequently, the magistrate judge issued a multiple-page Report and Recommendation denying the motion to suppress, finding testimony

from some prosecution witnesses to be credible and complainant's testimony to be at times implausible, and otherwise not credible. The district judge adopted the Report and Recommendation and denied the motion to suppress, explaining that the district judge had reviewed the magistrate judge's recommended decision in conjunction with the complete record and had made a de novo determination of the adjudicated matters.

Over the next several months, complainant filed numerous motions to modify conditions of release, all but one of which the magistrate judge granted in full or in part. Complainant also filed a motion with a financial affidavit requesting that the court appoint his attorney under the CJA due to a change in complainant's financial circumstances.<sup>2</sup> After hearing argument on the motion for appointment of counsel, the district judge found that the financial affidavit did not indicate that complainant qualified for CJA counsel and denied the motion without prejudice, adding that complainant's counsel could withdraw or resubmit a motion for appointment with a new financial affidavit as appropriate.

Following a change of plea hearing, at which complainant pleaded guilty to one of the charges on which he had been indicted pursuant to a written plea agreement, the district judge released him on the same conditions previously imposed.

Prior to sentencing, complainant was arrested for a violation of conditions of release. At the revocation hearing, the district judge summarized in detail complainant's

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<sup>2</sup> The court had authorized the withdrawal of complainant's first attorney following a hearing. This motion was filed on behalf of complainant's second attorney.

due process claims and explained at length that the relevant statutes and caselaw wholly contradicted complainant's position on the issue. When complainant's counsel continued to press the argument, the district judge asked counsel to sit down, indicating that the court had made its ruling. The district judge ruled that complainant had violated a condition of bail, ordered that complainant be retained in custody, indicated that the court would hold a further hearing upon request, and allowed complainant the opportunity to provide additional case law in support of his due process argument. Complainant neither requested an additional hearing nor provided additional caselaw, and the district judge issued a lengthy order revoking complainant's bail, explaining that, given the applicable sentencing guideline, complainant was not at risk of serving an excessive sentence.

Complainant filed multiple motions to extend the time to file his sentencing memorandum, which the district judge granted. At the sentencing hearing, the district judge sentenced complainant to the statutory maximum sentence, explaining that the guidelines did not reflect adequately the severity of complainant's conduct. However, the court declined to apply an increase included in the plea agreement.

Complainant's allegations that either subject judge was biased against complainant based on his race or for any other reason, or that the district judge violated the Code of Conduct<sup>3</sup>, neglected to review the record and pleadings in complainant's case, or engaged

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<sup>3</sup> A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code [

in any other misconduct are baseless. There is no evidence that the magistrate judge was improperly motivated in recommending that the court deny complainant's motion to suppress. The complaint, the magistrate judge's lengthy recommended ruling upholding the legality of the evidence in question, and the rest of the reviewed record offer no corroboration for the conclusory claim that the magistrate judge's credibility determinations or other findings were motivated by race or any other improper criterion.<sup>4</sup>

Complainant's claims that the district judge made racist statements at complainant's sentencing hearing are wholly refuted by the transcript of the proceeding, which contains no remarks indicative of improper animus, including the one proffered by complainant. Nor does complainant provide any support for the conclusory assertion that the court altered this transcript or any other part of the record.

The record also fails to offer any support for the allegations that the district judge deprived complainant of effective assistance of counsel, coerced complainant's guilty plea through his counsel or otherwise, improperly predetermined complainant's sentence, see supra at p. 5, or engaged in any other wrongdoing. Contrary to complainant's allegations, the record indicates that the district judge held multiple hearings at which complainant presented his arguments, allowed complainant multiple opportunities to

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of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the [Misconduct] Act and these Rules . . .").

<sup>4</sup> Although not necessary to the disposition of the allegations against the magistrate judge, the magistrate judge issued multiple rulings in complainant's favor. See supra, pp. 3-4.

provide additional briefing or argument, issued extensive and reasoned rulings, and ruled in complainant's favor on multiple occasions. See supra, pp. 3-5.

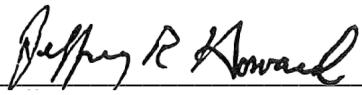
Further, the district judge's description of complainant's criminal conduct at the sentencing hearing, to which complainant objects, and the statement interrupting complainant's counsel during the revocation hearing, see supra at pp. 4-5, do not remotely suggest "'the sort of deep-seated unequivocal antagonism' that may constitute misconduct." Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015 (July 11, 2012), at p. 6 (quoting In Re: Complaint of Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, Feb. 24, 2011)). See also Rules of Judicial-Conduct, Rule 4(a)(2)(B) ("Cognizable misconduct . . . includes . . . treating litigants . . . in a demonstrably egregious and hostile manner . . ."). To the contrary, "judges commonly express views based upon the record . . . in court . . .," Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015 (July 11, 2012), at p. 5 (quoting In Re: Complaint of Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, Feb. 24, 2011), and may "exercise reasonable discretion over [their] . . . courtroom environment." See Howard, C.C.J., Order, In Re Complaint No. 01-15-90012 (Oct. 7, 2015), at p. 4 (quoting Boudin, C.C.J., Order, In Re Complaint No. 429 (June 12, 2006), at p. 4). Accordingly, the misconduct complaint is dismissed as not indicative of misconduct, as baseless, and as "conclusively refuted by objective evidence," pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(iii), and 352(b)(1)(B), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(D), and Commentary to Rule 11

("[D]ismissal is appropriate 'when . . . the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.' 28 U.S.C. § 352(b)(1)(B).").

Where, as here, there is no evidence of improper judicial motivation, complainant's challenges to the court's jurisdiction and to the substance of or reasoning for the court's orders, including -- the denial of his motions to suppress and to appoint counsel under the CJA, the order revoking bail, and the imposition of his sentence -- are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling . . ."); id. Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related."). Therefore, the complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint Nos. 01-19-90035 and 01-19-90036 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), 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), respectively.

September 14, 2020  
Date

  
Chief Judge Howard