

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-19-90038, 01-19-90039, 01-19-90040,  
01-19-90041, 01-19-90042, 01-19-90043, AND 01-19-90044

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: AUGUST 19, 2020

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Complainant, an incarcerated pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against six appellate judges and one district judge in the First Circuit. Complainant alleges judicial misconduct in connection his criminal case and its appeal over which the subject judges presided. The misconduct complaint is not cognizable.<sup>1</sup>

Complainant lodges a series of confused allegations against the subject judges, as well as against his appellate counsel and the prosecutors in his criminal case.<sup>2</sup>

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<sup>1</sup> The Judicial Council has authorized me, as Chief Circuit Judge, to dispose of the present matter on the merits "in the interest of sound judicial administration." See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 25(f) ("If all circuit judges in regular active service are disqualified, the judicial council may determine whether . . . in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.").

<sup>2</sup> Complainant's allegations against his appellate attorney and the U.S. Attorney's Office are not addressed, as the judicial misconduct complaint process only provides an avenue for asserting claims against federal judges. See 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rule 1(b).

Complainant seems to allege primarily that the judges allowed his conviction to stand despite its reliance on fabricated physical evidence. Complainant apparently asserts that the Court of Appeals neglected to address this and other issues that complainant raised in his appeal, when the Court affirmed his conviction and sentence, and denied his petition for rehearing en banc. Complainant apparently contends that the Court of Appeals wrongly denied his request for appointment of counsel to file a petition for writ of certiorari and failed to act on a complaint of misconduct that complainant filed against his and the government's attorneys in the appeal. Complainant requests that his conviction be vacated.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case. 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 misconduct complaint is not cognizable. The reviewed record, including the misconduct complaint, the dockets of the proceedings, and the courts' orders, indicates that, nearly a decade ago, complainant, who was represented by counsel appointed under the Criminal Justice Act (CJA), was indicted on one count of armed bank robbery. A jury found complainant guilty, and the subject district court judge sentenced him to 150 months in prison.

Complainant appealed the district court's judgment, and, at complainant's request, the Court of Appeals appointed new appellate CJA counsel. Nonetheless, over the next

several months, complainant filed pro se a multitude of documents, including, but not limited to, correspondence to counsel directing specific action in the appeal and motions for appointment of new counsel. The Court denied the requests for new counsel but allowed complainant to file a supplemental pro se brief in addition to his counsel's brief. Thereafter, complainant filed and tendered several additional pro se supplemental briefs, asserting in part, that the physical evidence in his case was fabricated, numerous pro se motions seeking various relief, and a complaint alleging that all parties and attorneys involved in his case were engaged in misconduct.

The presiding panel affirmed the district court's judgment in a multi-page judgment and explained that it had reviewed the arguments complainant presented in his supplemental pro se brief and other supplemental filings, and denied complainant's outstanding motions.

The record further indicates that complainant's counsel filed a motion to withdraw, explaining that a petition for rehearing or for writ of certiorari would be frivolous, which the Court denied as counsel failed to indicate that complainant had been advised of the deadline to file a petition for writ of certiorari. Complainant filed a pro se petition for rehearing and rehearing en banc, which the Court accepted despite its non-compliance with certain procedural rules. The panel that had issued judgment in the appeal denied the petition for rehearing, and the Court of Appeals denied the petition for rehearing en banc and issued mandate.

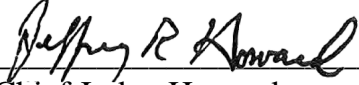
Complainant's counsel filed a renewed motion to withdraw, explaining that complainant had notified counsel that he wished to file a petition for writ of certiorari and that counsel had determined that doing so would be frivolous but had advised complainant of the applicable deadline. The presiding panel granted the motion, observing that review of a petition for writ of certiorari is discretionary and that there is no right to counsel to pursue a discretionary appeal. Subsequently, complainant filed a motion apparently seeking, in part, appointment of counsel for filing a petition for writ of certiorari, which the Court denied on the same bases as the order allowing counsel to withdraw. Over the next several years, complainant repeatedly sought to recall mandate, and the Court has since directed the Clerk not to accept further filings in complainant's appeal. Complainant also filed an unsuccessful motion in the district court seeking to set aside his conviction and sentence, and a pending motion to vacate pursuant to 28 U.S.C. § 2255.

Complainant's allegations that he was wrongly convicted, and that the appellate judges neglected to review his arguments and wrongly decided complainant's motions are based exclusively on complainant's disagreement with the courts' orders and rulings in his criminal proceeding and on appeal. Complainant does not allege, let alone provide any evidence, that any of the judges were improperly motivated in handling complainant's case or engaged in any wrongdoing. Therefore, the complaint is 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 . . . . If the decision or

ruling is alleged to be the result of an improper motive . . . or improper conduct in rendering a decision or ruling, . . . the complaint is not cognizable to the extent that it calls into the question the merits of the decision."). Accordingly, the complaint is dismissed, 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. 01-19-90038, 01-19-90039, 01-19-90040, 01-19-90041, 01-19-90042, 01-19-90043, and 01-19-90044 is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

August 19, 2020  
Date

  
Chief Judge Howard