

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-24-90028

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 13, 2025

Complainant, a criminal defendant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges that the judge engaged in judicial misconduct in connection with her criminal proceeding.¹ For the reasons explained below, the complaint is dismissed in part and concluded in part.

Complaint

Complainant alleges that the judge orchestrated an illegal conspiracy with the U.S. Attorney, defense counsel, and other judges involved in the case to deprive complainant of her legal and Constitutional rights, "to aid the government in its prosecution" of complainant, and to help "cover-up the unlawful actions of the government prosecutors," thus committing "[f]raud on the [c]ourt."² She contends that the judge's conduct violated

¹ Complainant also references a related civil forfeiture proceeding; the subject judge did not preside over or issue any orders in this matter.

² As complainant does not identify the other named judges as subjects of the complaint, as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), complainant was notified that the complaint was accepted only against the subject judge. See Rules of Judicial-Conduct, Rules 1, 3(h), and 6. Further, complainant's allegations against various attorneys are not addressed, as the governing statute and the Rules of

numerous provisions of both the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct)³ and the Code of Conduct for United States Judges (Code of Conduct),⁴ as well as other federal rules and laws.

Allegations of Bias and Conflict of Interest

Complainant suggests that the conspiracy is based on the judge's improper relationships with a supervisory Assistant U.S. Attorney (AUSA), with whom the judge previously worked, and with one of complainant's attorneys, whom complainant alleges the judge "secretly" appointed as a "'favor to [a] friend' to allow him to collect tax dollars" Complainant contends that the judge exhibited pervasive personal bias and extreme partiality throughout the criminal proceeding, such that the court's rulings were "not issued in the administration of justice or to effectuate the duties of the court," but to

Judicial-Conduct provide for the filing of complaints against federal judges only. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h).

³ Complainant maintains that the judge violated Rule 4(a) of the Rules of Judicial-Conduct, including Rules 4(a)(1)(A) ("using the judge's office to obtain special treatment for friends or relatives"), 4(a)(1)(C) ("engaging in improper ex parte communications with parties or counsel for one side in a case"), 4(a)(2)(B) (engaging in "demonstrably egregious and hostile" behaviors), 4(a)(3) (engaging in discrimination based on race or national origin), and 4(a)(4) (retaliation).

⁴ Complainant alleges that the judge's conduct violated the Code of Conduct for U.S. Judges (Code of Conduct), including: Canons 1 ("A judge should uphold the integrity and independence of the judiciary."), 2(A) ("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."), 2(B) ("A judge should not allow . . . relationships to influence judicial conduct or judgment."), 3(A)(1) ("A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism."), 3(A)(3) ("A judge should be patient, dignified, respectful, and courteous [to all those] . . . with whom the judge deals in an official capacity."), 3(A)(4)(a-b) ("[A] judge should not initiate, permit, or consider ex parte communications" unless authorized by law or when circumstances require it.), 3(B)(2) ("A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code [of Conduct] if undertaken by the judge."), 3(B)(3) ("A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism."), 3(B)(4) ("A judge should not retaliate against those who report misconduct."), 3(B)(6) ("A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened th[e] Code [of Conduct]"), and 3(C)(1)(a-b) ("A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to [when] . . . the judge has a personal bias or prejudice concerning a party . . . or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter.").

further a conspiracy to conceal the "unlawful theft of . . . complainant's assets . . . and to intentionally deprive [her] of her rights, including by facilitating fraud resulting in a [lengthy] unlawful detention." Complainant maintains, in part, that, in furtherance of this conspiracy and in an "outrageous abuse of power," the judge intentionally misrepresented the facts, misapplied the law, willfully violated rules and procedures, failed to act on attorney conflicts of interest and on the government's manufacturing of evidence, and refused to hold evidentiary hearings.

Allegations of Improper Ex Parte Communication

Complainant alleges that the judge committed cognizable misconduct when the judge engaged in ex parte communications with the supervisory AUSA concerning complainant's release from pretrial detention and failed to disclose both the judge's previous relationship with the supervisory AUSA and the communication. Complainant includes apparent correspondence from another AUSA to complainant's counsel disclosing a text communication between the judge and the supervisory AUSA. In the text exchange, the judge questioned, following an unrelated exchange, whether the government was going to appeal the magistrate judge's order releasing complainant, to which the supervisory AUSA responded that another magistrate judge did not release complainant, and the judge remarked that the second magistrate judge was going to do so, but had to recuse.

Complainant asserts that, in addition to constituting improper ex parte communication, the text messages demonstrate the personal relationship between the judge and the supervisory AUSA, which, combined with their prior lengthy co-working

relationship, creates, at a minimum, an appearance of bias that required the judge's recusal from complainant's proceeding. Complainant asserts that "[e]x parte communication is included among the statutory causes of required judicial disqualification."

Complainant further notes that the two AUSAs on the case were replaced shortly after disclosure of the ex parte communication and shortly before trial, and contends that the timing of their "reassignment, without explanation . . . reeks of retaliation," and that the judge has improperly failed to address the relationship with the supervisory AUSA or the ex parte communications.

Complainant further speculates that an anomaly in the dates of the communications — whereby defense counsel's letter to complainant informing her of the ex parte communication is dated several weeks before correspondence from the AUSA to defense counsel disclosing the text communication — suggests that "there is probable cause to believe that [the letters] may have been manufactured as part of an illegal criminal conspiracy to obstruct justice and to support the government's absurd claim" that complainant "'waived her right' to a fair trial and cannot state judicial misconduct as [a] reason for requesting a new trial because [she] was supposedly made aware of the ex parte text exchange by her then defense counsel." Complainant further surmises that the date discrepancies relating to the text messages may be due to "an intentional attempt . . . to cover-up the fact that [the judge] was engaged in ex parte communications with [the supervisory AUSA] *before* denying [complainant's] Motion to Recuse in an effort to conceal true motivations for refusing to recuse (i.e[.,] unlawful conspiracy)"

Allegations of Improper Rulings and Delay

Complainant objects to numerous orders issued in the case and, citing to the Commentary to Rule 4 of the Rules of Judicial-Conduct, notes that "an allegation that a judge conspired with a prosecutor" or issued a ruling based on complainant's race would not be "merits-related" because it "attacks the propriety of arriving at rulings with an illicit or improper motive."⁵ Complainant contends that the judge improperly cites "fraudulent" precedent as support for an improper order denying complainant access to the court. Arguing that the appearance of a conflict of interest requires recusal, complainant objects to the court's order denying complainant's pro se motion for the judge's recusal, filed "just three weeks before the supposed date of the ex parte . . . communication," in which the judge determined that there was no known reason why the court's impartiality might be reasonably questioned, under 28 U.S.C. § 455. Complainant asserts that the court's refusal to accept complainant's pro se filings and ignore apparent conflicts of interest violated complainant's First and Sixth Amendment rights, and suggests that the order denying the motion for recusal was based on the judge's "previous relationship" with defense counsel and the supervisory AUSA.

Complainant maintains that, at a specified status conference, the judge retaliated against her for seeking the judge's recusal, by informing complainant that the court was not sure it could find another Criminal Justice Act (CJA) attorney to represent her and continued her trial with the same conditions of release, thus attempting to "muscle"

⁵ Complainant also objects to other judges' rulings, which are beyond the scope of this complaint. See supra note 2.

complainant into retaining the attorney with whom the judge allegedly had a friendship, despite the attorney's "conspiratorial behavior and conflicts of interest."

Complainant continues that, despite repeatedly refusing to recuse, the judge ultimately issued a "false judicial order," transferring the case for sentencing, without first recusing, to another judge, who had previously recused from the case and thus has an appearance of bias, to "prevent the striking of . . . [complainant's] fraudulent conviction." Complainant surmises that the recusals of two judges from complainant's case, as well as the reassignment of the AUSAs, all during a several month period and without explanation, support complainant's claims of conspiracy and conflict of interest.

Complainant further objects to the "unprecedented conditions of release" that the judge imposed "as a result of a criminal conspiracy[.]" and which amounted to "harassment" and unlawfully impacted complainant's family by requiring them to relinquish their passports and other legal entitlements in violation of their constitutional rights. Complainant contends that the government's stated concerns about flight risk, cited in support of complainant's pretrial detention, were false, as evidenced by the text messages, see supra p. 3. Complainant asserts that the judge's remarks during another status conference, in which the judge indicated that the court would not release complainant on the same record that other judges detained her are prejudicial and indicate that the judge is "not an independent arbiter of the law." Complainant adds that the judge's reliance on complainant's potential access to the money at issue in the case, for the strict conditions of release, is inconsistent with the court's appointment of CJA counsel.

Complainant concludes that, although the judge was aware that the government appealed complainant's release "under false pretenses and for an unlawful reason," the court delayed ruling for several weeks. Complainant maintains that the conditions of release imposed by the court discriminate based on complainant's national origin because the judge required complainant's counsel to notify a foreign embassy not to issue complainant a passport or travel documents, thus assuming she would have access to such documents even though she is an American citizen.

Complainant maintains that the court's order requiring her to produce an exhibit list days before trial is one of the judge's "most egregious" and "unlawful actions." She further contends that, by denying complainant's requests to continue trial and to stay the proceedings while the appeal was pending, the judge "forc[ed complainant] to trial unrepresented." She also objects to the judge's jury instruction on the statute of limitations, which violated complainant's right to due process and resulted in a wrongful conviction, and the judge's permitting the use of "unauthenticated, stale documents of questionable source[s]" at trial.

Allegations of Judicial Hostility

Complainant adds that the judge exhibited hostility to a juror and implies that the judge did so based on the juror's race, prior to declaring a mistrial, when the judge publicly admonished and rudely dismissed him.

Relief Requested

Complainant requests the judge's "immediate recusal and/or immediate suspension" pending a special committee investigation and the reassignment of the case to another judge.

Discussion

As an initial matter, the judicial conduct and disability process does not provide an avenue for ordering the recusal or suspension of a judge, or the reassignment of a case. See 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rules 11, 19(b), and 20(b). Nor, as explained further below, does the complaint warrant the appointment of a special committee. See Rules of Judicial-Conduct, Rule 11(f) (requiring the appointment of a special committee if the complaint is not dismissed or concluded).

A limited inquiry was conducted that included review of the misconduct complaint and attachments, and the docket, orders, and relevant transcripts of the lengthy proceeding. In addition, at the direction of the chief circuit judge, a response to the complaint was requested from the subject judge. As explained below, based on that review and the judge's response, there is no basis for further inquiry. See Rules of Judicial-Conduct, Rule 11(b) (providing, in part, that "[t]he 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 obtain and review transcripts and other relevant documents" and that, "[i]n conducting the inquiry, the chief judge must not determine any reasonably disputed issue").

Case Record

According to the record, complainant, with a co-defendant, was indicted on several counts relating to fraud. The case was assigned to a district judge and a magistrate judge, neither of whom is the subject of this complaint, and complainant's first retained counsel entered an appearance. The court subsequently denied complainant's motion for release from custody and ordered complainant detained pending trial on the ground that complainant's proposed conditions of release were insufficient to address her serious flight risk, in light of complainant's potential access to funds in her birth country about which complainant refused to provide information. Over the next year, complainant filed repeated requests for release from custody and/or to modify the terms of her pretrial detention, all of which were unsuccessful. In addition, the court held several status conferences addressing, in part, complainant's access to discovery, as well as complainant's dissatisfaction with her counsel, attempts to retain new counsel, and pro se filings.

After complainant's first counsel withdrew and complainant was briefly authorized to proceed pro se with standby counsel appointed pursuant to the CJA, the defense attorney who allegedly had a relationship with the judge filed an appearance as complainant's retained counsel. Thereafter, counsel filed motions to dismiss and/or for discovery, followed by a motion for release from pretrial detention, arguing that time had passed and circumstances had changed based on developments in the co-defendant's case.

The case was reassigned to the subject judge,⁶ who, at a status conference, addressed, in part, complainant's motions to dismiss and for release. See supra p. 9. The government explained that it could not agree to complainant's release without a financial statement that outlines complainant's assets held abroad, and the judge indicated that the court would hold the motion for release under abeyance to allow complainant an opportunity to submit information addressing the government's concerns, noting that the court would not release complainant on the same record that other judges have detained her.

Following the hearing, the judge denied complainant's motions to dismiss, set a trial date, and repeatedly informed complainant that pro se filings would not be accepted as she has retained counsel. Thereafter, complainant filed pro se a motion for the judge's recusal, asserting, in part, that the judge is biased in favor of the government and engaged in a conspiracy against her. Noting the nature of this communication, the court docketed this pro se motion and ordered defense counsel and the government to submit responses. Complainant's counsel indicated that complainant would like to urge that her motion be granted, and the government responded that complainant's motion is baseless as it is based on her disagreement with the court's rulings. The judge denied the motion to recuse on the ground that complainant has not demonstrated a reason for recusal under 28 U.S.C. § 455 and that there is no known reason why the court's impartiality might be reasonably questioned.

⁶ The first judge had recused pursuant to a local rule which authorizes a district judge to return a case to the clerk for reassignment in the interest of justice or to further the efficient performance of the business of the court.

Meanwhile, the judge referred complainant's motion for release to a second magistrate judge, as the first magistrate judge had recused. Following a multi-day hearing, the magistrate judge granted complainant's request for revocation of the detention order, finding that complainant's continued detention violates due process and granting her pretrial release on multiple conditions. The conditions included, in part, complainant's home incarceration with electronic monitoring and complainant's and complainant's family's surrendering their passports. The magistrate judge stayed the release decision pending the subject judge's ruling on any appeal, explaining that the government represented that it intended to appeal the decision and requested a stay. Following the filing of the government's appeal and complainant's opposition thereto, the judge, in a multiple-page memorandum and order, discussed the relevant factual and procedural background, provided an analysis of the detention factors, determined that due process concerns alone now warrant complainant's release pending trial, and denied the appeal, referring the case back to the magistrate judge to set appropriate release conditions. After additional hearings, a third magistrate judge, to whom the matter had been referred, ordered that complainant be released on conditions, including, but not limited to, the surrendering of her passport and home incarceration.

Thereafter, two AUSAs filed notices of appearance, the judge decided a host of pretrial motions, the government voluntarily dismissed several charges, and the judge presided over a lengthy jury trial. During deliberations, a juror brought forth concerns about the possible misconduct of another juror. The judge consulted with counsel for both sides and questioned a number of jurors individually, including the juror who had

allegedly engaged in misconduct, and who, during questioning, admitted to the misconduct. After explaining to the juror that his misconduct resulted in a significant waste of time and expense, the judge declared a mistrial.

Following the mistrial, complainant filed a motion to modify conditions of release to remove the condition that she be subject to location monitoring and home confinement, which was referred to the magistrate judge who had allowed complainant's previous motion for release, see supra at p. 11. The magistrate judge denied the motion following a hearing, explaining that these conditions were crucial to the decision authorizing her pretrial release, and the subject judge denied complainant's appeal of this order. The following month, complainant filed, and the judge allowed, complainant's assented-to motion to modify the conditions of her release to return her family members' passports.

Meanwhile, complainant filed a motion requesting that her retained counsel be appointed under the CJA, which the judge granted. At a subsequent status conference, see supra pp. 5-6, at which complainant's counsel requested to withdraw, complainant requested appointment of new counsel, and the judge explained that, in order to protect complainant's rights, the court would try to find counsel for complainant, but that the court may not be successful and that appointment of new counsel will delay the trial. At the conclusion of the hearing, the judge allowed complainant's counsel to withdraw and, subsequently, the trial was postponed pending appointment of counsel. Thereafter, the court appointed new CJA counsel for complainant, denied appointed counsel's requests to withdraw until complainant retained new counsel, and denied complainant's motions to proceed pro se and for release of funds to hire retained counsel, explaining that the funds

are restrained by an order entered in her civil forfeiture proceeding, see supra note 1, and that there is a pending appeal in the Court of Appeals of the denial of her motion for release of these funds. Ultimately, the judge authorized the withdrawal of appointed counsel, allowing complainant to represent herself with standby counsel at her second trial.

Prior to the trial, the judge denied complainant's motion to dismiss, based on violations of the Speedy Trial Act, and denied the government's pretrial motion to admit stipulations from the prior trial, explaining that the court would not require complainant, who was proceeding pro se, to accept stipulations that she opposed on the current record. The court further decided a number of other pretrial motions and complainant's motion for a stay pending her appeal of the order denying her motion to dismiss based on double jeopardy, explaining that retrial is not barred following a mistrial that was declared due to manifest necessity.

At a final pretrial hearing, the court addressed various pretrial motions, including, but not limited to, the government's motions to compel complainant to identify and produce the exhibits she intended to introduce at trial, arguing that her exhibit list included thousands of vaguely identified documents of which she did not provide copies, and to pre-authenticate various self-authenticating records, pursuant to the Federal Rules of Evidence, for introduction as exhibits at trial. After hearing complainant's objections to these motions, the judge ordered complainant to identify any exhibits that she intended to offer in her case-in-chief several days prior to offering them as evidence and granted the government's motion to pre-authenticate documents.

The judge presided over complainant's second jury trial at which the jury found complainant guilty on multiple counts. Complainant filed a motion for a new trial that, among other issues, raised allegations of judicial misconduct, including, in part, the text message conversation between the judge and the supervisory AUSA, who was not counsel in the matter.⁷ See supra p. 3. Complainant additionally filed a motion for the disqualification of the U.S. Attorney's Office for the district based, in part, upon the ex parte communications, in which she also requested the judge's recusal. The government opposed both of these motions and noted that, as to the text message conversation, complainant waived any claim for recusal since it was not brought forth before either trial and that the text messages show no bias against complainant.

The judge entered a lengthy order denying the motions for a new trial and to disqualify the U.S. Attorney's Office, first determining that recusal from ruling on the motions was not warranted, as the court had no actual bias or prejudice against complainant and complainant's disagreements with the court's prior rulings do not provide a sufficient basis for recusal. As to the allegations of judicial misconduct concerning the text messages, the judge determined that there is no evidence of prejudice to complainant arising from the texts and that, without prejudice, the messages are not grounds for a claim of judicial misconduct or a new trial. The judge added that

⁷ Complainant included, as an exhibit to the motion for a new a trial, the letter to complainant from her attorney and enclosed correspondence, addressed to her attorney and copied to the judge, from the AUSA assigned to the case at that time, attaching a screenshot of the text messages. See supra p. 3. It appears that complainant's counsel's letter informing her of the disclosure of the ex parte text messages was misdated, as this letter predated both the enclosed letter from the AUSA and the date of the text messages. Any error of counsel would not be indicative of misconduct by the judge.

complainant also waived this argument due to her knowledge of the text messages before the first trial. The judge denied complainant's motion to disqualify the U.S. Attorney's Office, in part, because the supervisory AUSA did not intervene in any decision making regarding the appeal of complainant's release and the information discussed in the text messages was public record. Complainant again filed a motion for the judge's recusal, which the judge construed as a motion for reconsideration of the order denying complainant's post-trial motions and denied. Thereafter, the case was returned to the original judge, see supra note 6, for sentencing.

Analysis

First, the ex parte communication does not support complainant's allegations that the judge was engaged in a conspiracy or had a conflict of interest, either because of a relationship with the supervisory AUSA or complainant's counsel, or for any other reason. In the text exchange, which apparently was disclosed to complainant's counsel and to complainant shortly after it occurred, the judge inquired whether the government would appeal the magistrate judge's decision to release complainant, an appeal which the judge ultimately denied in complainant's favor.

Insofar as the communication may have constituted improper ex parte communication under Canon 3 or created an improper appearance under Canon 2 of the Code of Conduct,⁸ the judge has expressly and voluntarily acknowledged the potential

⁸ 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 [of Conduct] should lead to disciplinary action."); and Rules of Judicial-Conduct, Commentary on Rule 4

issues raised by the text exchange and committed to avoiding any similar communication going forward. Accordingly, the claim of improper ex parte communication is concluded for appropriate corrective action. See 28 U.S.C. § 352(b)(2), and Rules of Judicial-Conduct, Rule 11(d)(2). See also Rules of Judicial-Conduct, Commentary on Rule 11 (explaining that voluntary corrective action is "appropriate" when it acknowledges and remedies the problem).⁹

Complainant's remaining claims are meritless. There is nothing in the lengthy record to support complainant's allegations that the judge was engaged in a conspiracy, was biased against complainant because of her race or ethnicity or for any other reason, was improperly motivated in presiding over complainant's case, or thereby violated the Code of Conduct.¹⁰ Contrary to these allegations, the record demonstrates that the judge considered the merits of pending matters based exclusively on the record, held multiple hearings regarding complainant's motions, provided complainant with counsel, and

("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules An inadvertent, minor violation of [the Code of Conduct], promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the Act.").

⁹ With respect to whether this ex parte communication, to which complainant only objected following her conviction and several months after learning of it, was prejudicial, the judge states in the response to the complaint that the communication was not prejudicial to complainant. However, the "prejudice" contemplated under the Judicial-Conduct and Judicial-Disability Act is to the "effective and expeditious administration of the business of the courts," 28 U.S.C. § 351(a), which can of course occur in the absence of harm or prejudice to any individual. See, e.g., In re Complaint Against District Judge, No. 07-09-90074 (7th Cir. C.J. July 2, 2009) (a circuit chief judge identified a judicial misconduct complaint wherein a judge allowed video recording and live broadcasting in violation of Judicial Conference policy but without complaint or harm from a litigant). Nevertheless, as explained, in this matter, the judge has fully addressed any potential violation of the Code of Conduct. See Rules of Judicial-Conduct, Commentary on Rule 4 ("An inadvertent, minor violation of [the Code of Conduct], promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the [statute].").

¹⁰ See supra note 8.

entered orders that clearly delineated the grounds for the court's decisions. See supra pp. 9-15.

As to the judge's alleged relationships with the supervisory AUSA, who was not counsel in the matter, and complainant's counsel, a judge's prior employment relationship with either counsel for the government and/or defense counsel would not alone constitute a conflict of interest or provide reason to question the judge's impartiality, under either the Code of Conduct or the disqualification statute. See, e.g., Code of Conduct, Canon 3(C)(1) (providing circumstances in which a judge has a disqualifying conflict of interest), 28 U.S.C. § 455, U.S. v. Di Pasquale, 864 F.2d 271, 279 (3d Cir. 1988) (holding that recusal of a judge is not mandated when appellant failed to present specific evidence concerning bias, prejudice, or improper motive to doubt the trial judge's impartiality apart from the judge's prior employment at the U.S. Attorney's Office), and Riola v. Long Island Cycle & Marine, Inc., 352 F. Supp. 2d 365, 367 (E.D.N.Y. 2005) ("If recusal were required simply by virtue of the fact that a judge and an attorney in a case had once been employed in the same office, the administration of justice in this court and elsewhere would be severely hampered."). Nor does complainant provide any evidence to support her conclusory allegation that the judge had a personal relationship with complainant's attorney that would require recusal. See supra note 4 (explaining Code of Conduct, Canons 2(B) and 3(C)); and see Judicial Conference of the United States, Committee on Codes of Conduct, Advisory Opinion No. 11 (explaining that a judge's impartiality might be reasonably questioned when a "close friend" has a relationship "like that of a close

relative," but that a "friendly relationship [would] not [be a] sufficient reason in itself [to recuse]").

There is likewise no support in the record for complainant's allegation that the judge forced complainant into retaining the attorney, either at the specified status conference or at any other time, see supra pp. 5-6, or secretly appointed him as CJA counsel, as the record indicates that this lawyer, who was initially retained, was appointed under the CJA at complainant's request and represented her until he was permitted to withdraw, after which the judge appointed new CJA counsel. See supra pp. 9-13. Further, the judge's order transferring complainant's case back to the original judge does not evidence bias or other improper judicial motive. See supra p. 15. Accordingly, the misconduct complaint is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Where, as here, complainant provides no evidence of improper judicial motive, her objections to the substance and timing of the judge's rulings, including, but not limited to, the judge's denial of complainant's motions to recuse, impositions of conditions of release, and pretrial rulings, are not cognizable. The same holds true for complainant's claim that the judge improperly delayed in ruling on the government's appeal of the order revoking detention. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also Rules of Judicial-Conduct, Rule 4(b)(1) and (2) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls

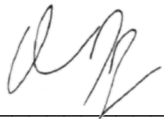
into question the merits of the decision. . . . Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases."), and 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."). Accordingly, 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).

Finally, the transcript of the proceeding dispels complainant's remaining claim that the judge's admonishment of the juror whose conduct necessitated complainant's mistrial reflected either racial bias or egregious hostility, under Rules of Judicial-Conduct, Rules 4(a)(3) and 4(a)(2)(B), respectively.¹¹ See also 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial-Conduct, Rule 11(c)(1)(D) and Commentary on Rule 11 (Dismissal is appropriate when the allegation is "conclusively refuted by objective evidence.").

¹¹ In dismissing the relevant juror, the judge expressed the court's displeasure with having to declare a mistrial based on the juror's conduct, noting that the conduct wasted taxpayer time and money, and caused complainant to have to undergo another trial. These comments are neither evidence of racial bias nor abusive or hostile. See Rules of Judicial-Conduct, Rules 4(a)(3) and 4(a)(2)(B).

For the reasons stated, Complaint No. 01-24-90028 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), (b)(1)(A)(iii), and (b)(1)(B), and concluded, pursuant to 28 U.S.C. § 352(b)(2). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), 11(c)(1)(D), and 11(d)(2), respectively.

February 13, 2025
Date



Chief Judge Barron