

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-25-90015

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: AUGUST 28, 2025

Complainant, a former criminal defendant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with his criminal matter over which the judge presided. The allegations in the misconduct complaint are conclusively refuted by the record, lack factual foundation, and are not cognizable.

Complainant alleges that the judge was biased against and "belligerent[t]" toward complainant while presiding over complainant's "trial proceedings" and motion for compassionate release. Complainant asserts that the judge's "unwarranted level of acrimony" toward complainant "culminated at the end of [complainant's] sentencing [hearing]" when the judge "order[ed] the courtroom [to be] cleared except for [complainant], [complainant's] defense attorney, and the prosecuting attorney,"¹ and "stated, after the courtroom had been cleared (with the above indicated exceptions):] 'If I

¹ Complainant provides the names of both attorneys. Complainant adds that "courtroom staff were also, to the best of [his] recollection, ordered out of the [court]room."

had a Marshal in here[,] I'd get his gun and shoot you right now!" Complainant adds that his counsel told the judge "that if [the judge] didn't stop, he would file charges . . . against [the judge]." Complainant further states that he "was so stunned by the exchange, [he] remember[s] [sic] what, if anything, occurred next." Complainant further asserts that, "unknown to [the judge], two other individuals remained in [the] courtroom, just out of sight," after the judge purportedly "cleared" the courtroom — a named friend of complainant and an unnamed U.S. Marshal who was escorting complainant.

The complaint, when considered in the context of the record as a whole (including the dockets, transcripts, and audio recordings of the relevant proceedings), does not support complainant's allegations of judicial misconduct and provides no basis for further inquiry. See 28 U.S.C. § 351, et seq.; and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) and Commentary on Rule 11 ("[D]ismissal is appropriate 'when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.'" (citation omitted)).

The record indicates that, several years ago, complainant was indicted on a criminal charge, was appointed Criminal Justice Act counsel, and pled not guilty. A few months later, the judge held a change of plea hearing, at which the judge explained that the court would be asking complainant questions, invited complainant to interrupt and ask for clarification if he did not understand the judge's questions or if he wanted to speak with counsel, explained complainant's rights, asked complainant a number of questions,

determined that complainant was entering his plea knowingly and voluntarily, and accepted complainant's guilty plea.

A number of months later, after granting complainant's two unopposed motions to extend the time for completion of the presentence process and the government's motion for an extension to file objections to the presentence investigation report, the judge held complainant's sentencing hearing. At the beginning of the sentencing hearing, the judge directed court staff to provide complainant with a device to assist with a physical issue; addressed complainant directly to explain the process for the sentencing hearing, stating that the court wanted to ensure that complainant understood his sentence and the court's reasoning for it; and asked complainant a series of questions to confirm that complainant was able to understand the proceedings and that complainant authorized his counsel to speak for him. As the sentencing hearing proceeded, counsel for both parties presented to the court regarding complainant's potential sentence, the court heard from complainant and several individuals who spoke in support of complainant, and complainant's counsel read written statements in support of complainant from several other individuals. Before proceeding to discuss complainant's sentence, the judge noted that complainant's counsel had not moved into evidence letters that counsel had previously submitted on complainant's behalf, asked if counsel wanted to do so, and allowed counsel's motion for the letters to be entered into evidence. The judge then explained that the court had reviewed the presentence investigation report; considered the information included in the report, the letters in support of complainant, and the statements of the attorneys, complainant, and complainant's supporters; outlined the applicable sentencing guidelines;

described complainant's lengthy criminal history; stated that complainant is a danger to the community; and imposed an upwardly variant sentence. Before concluding the hearing, the judge confirmed that counsel had no further concerns and that complainant understood the conditions of his supervised release and his right to file an appeal. Immediately prior to ordering the court's recess, the judge wished complainant well. The next day, the court entered judgment.²

Subsequently, the magistrate judge assigned to the case entered a sua sponte motion for sentence modification based on statutory and guidelines changes potentially relevant to complainant's sentence and appointed counsel to represent complainant in the matter. After briefing was complete, the subject judge entered an order reducing complainant's sentence.

Several months later, complainant, through counsel,³ filed a motion for compassionate release based on complainant's medical conditions, the government filed an opposition, and complainant filed a reply. After holding a hearing on the motion, at which complainant was permitted to appear remotely at his request, the judge entered a multiple-page order, describing the relevant background, outlining the applicable legal standard, weighing the relevant factors, and denying the motion for compassionate release.

² Complainant, through counsel, appealed his conviction and sentence, arguing that complainant's guilty plea was not voluntary and that his sentence was substantively unreasonable. Complainant's principal and reply briefs did not mention that the judge made any statement that the judge wanted to shoot complainant, nor was the alleged statement raised during oral argument. The Court of Appeals affirmed the district court judgment.

³ Complainant was represented by counsel throughout the compassionate release proceeding.

The record of the proceedings does not support complainant's allegations of judicial misconduct and provides no basis to inquire further as to complainant's allegation that the judge stated that, "[i]f [there was] a Marshal in here[,] [the judge would] get [the Marshal's] gun and shoot [complainant] right now" after ordering the courtroom almost entirely cleared. Notably, the dockets of both the district court matter and the appeal thereof indicate that complainant, who was represented by counsel throughout both proceedings, did not allege in the context of the cases that the judge made the statement. See supra p. 4 and note 2. In fact, more than two years passed between the sentencing hearing after which the judge allegedly made the statement and complainant's filing of this misconduct complaint. Moreover, complainant's assertion that, "at the end of [complainant's] sentencing" hearing, the judge "order[ed] the courtroom cleared," with limited exceptions, is "conclusively refuted by" the transcript of the proceeding, which provides that the hearing ended with the judge simply ordering the court in recess and wishing complainant well immediately prior to doing so. See supra p. 4; and 28 U.S.C. § 352(b)(1)(B).

Further, the record does not support complainant's allegations that the judge was biased against him and treated him with "acrimony" throughout his criminal case and that these attitudes "culminated" with the judge's statement after the sentencing hearing. A review of the transcript of the sentencing hearing provides that the judge was entirely respectful toward complainant, his supporters, and counsel for both sides and that all exchanges between the judge and complainant were polite. See supra pp. 3-4. In fact, the

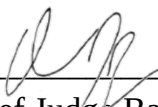
transcript of the sentencing hearing provides that the judge addressed complainant directly, attempted to ensure that complainant understood his sentence and the reasons for it, ensured that the letters in support of complainant were entered into evidence, and wished complainant well at the conclusion of the proceeding. See supra pp. 3-4. Likewise, the transcript of complainant's change of plea hearing provides that the judge was equally respectful of complainant during this proceeding, as, for example, the judge invited complainant to interrupt the court with questions during the hearing. See supra pp. 2-3. Further, the docket of the district court proceeding also provides no support for complainant's allegations that the judge was hostile toward complainant or had any improper motivation in presiding over complainant's case. The docket demonstrates that the judge made several rulings in complainant's favor, including, but not limited to, an order reducing complainant's sentence, and that the judge's order denying complainant's motion for compassionate release, which was issued after a hearing, was detailed and reasoned. See supra pp. 3-4. Accordingly, the complaint is dismissed as "conclusively refuted by objective evidence" and "lack[ing] any factual foundation," pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D) ("A complaint may be dismissed . . . to the extent that the chief judge concludes that the complaint . . . is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred . . .").

Where, as here, there is no evidence of bias or other improper judicial motive, complainant's objections to the substance of the courts' rulings, including, but not limited to, the order denying complainant's motion for compassionate release, are not cognizable.

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) ("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 . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision. . . ."), 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).

For the reasons stated, Complaint No. 01-25-90015 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D), respectively.

August 28, 2025
Date



Chief Judge Barron