

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90002 and 01-16-90003

BEFORE
Torruella, Circuit Judge

ORDER

ENTERED: MAY 31, 2016

Complainant, an incarcerated pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit magistrate judge and district judge. Complainant alleges that the magistrate judge and district judge mishandled complainant's recent civil case challenging his state court conviction and incarceration.¹ The misconduct complaint is frivolous and not cognizable.

Complainant, a frequent filer who has filed over 20 collateral attacks in federal court on his underlying state court prosecution, conviction and incarceration, alleges that the magistrate judge and district judge who presided over complainant's latest civil proceeding wrongfully relied on the Prison Litigation Reform Act (PLRA), which they

¹This is complainant's third (and fourth) misconduct complaint. In 2002, he filed a complaint against a circuit judge that was dismissed as baseless. See Order, Boudin, C.C.J., In Re: Judicial Misconduct Complaint No. 328, September 23, 2002. See also Order, Judicial Council of the First Circuit, In Re: Judicial Misconduct Complaint No. 328, December 17, 2002. In 2007, he filed a misconduct complaint against a district judge that was similarly dismissed. See Order, Boudin, C.C.J., In Re: Judicial Misconduct Complaint No. 474, December 6, 2007. See also Order, Judicial Council of the First Circuit, In Re: Judicial Misconduct Complaint No. 474, May 1, 2008.

purportedly knew to be "patently unconstitutional," in dismissing complainant's case. Recounting his arrest and indictment in state court over 20 years ago, complainant asserts that his state court prosecution was void and that the magistrate judge and district judge are "acutely aware of [complainant's] patently unconstitutional unlawful imprisonment"

Complainant reiterates claims from his first misconduct complaint - that his indictment was improperly orchestrated, based on an unlawful search and seizure, and that he was denied exculpatory evidence - and charges the state judge who wrote the opinion upholding his conviction and sentence with violating a host of complainant's legal and constitutional rights. Complainant surmises that, since his underlying criminal prosecution was "void ab initio," his federal proceedings are "all fruit of the poisonous tree"

The misconduct complaint is frivolous. Complainant presents no coherent claims of cognizable misconduct against either of the presiding judicial officers, let alone any supporting facts or evidence in support of his conclusory assertions of wrongdoing. The reviewed record indicates that the magistrate judge recommended denying complainant's motion to proceed *in forma pauperis* (IFP) because it failed to comply with the statutory requirements applicable to incarcerated litigants who have had three or more such civil cases dismissed. See 28 U.S.C. § 1915(g). The district judge accepted this recommendation and, when complainant failed to submit the requisite fee, dismissed the case. The allegations that the magistrate judge or district judge knew that the governing statute or complainant's underlying prosecution, which has been upheld both on appeal

and in numerous collateral attacks, were unconstitutional are spurious. Neither the misconduct complaint nor the record of the case offer any information suggesting that either the magistrate judge or district judge harbored a nefarious motive in connection with their review of the case. As complainant's claims are presented without any factual support, the misconduct complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

Since the complaint is based exclusively on complainant's disagreement with the substance of the court's orders, it should also be dismissed as 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 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related.").

For the reasons stated, Complaint Nos. 01-16-90002 and 01-16-90003 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii).

5/31/16
Date



Judge Torruella

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90002 and 01-16-90003

BEFORE
Torruella, Lynch, Thompson, Kayatta and Barron, Circuit Judges
Torresen, Casper, Delgado Hernández and McConnell, District Judges

SHOW CAUSE ORDER

ENTERED: MAY 31, 2016

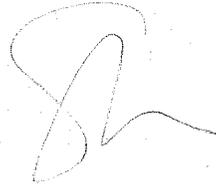
You have now filed four judicial misconduct complaints each of which has been found to be patently without merit. These complaints are Nos. 328, 474, 01-16-90002, and 01-16-90003.

Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), you are directed to show cause why an order should not be entered by the Judicial Council precluding you from filing any new judicial misconduct complaints without prior permission of the Judicial Council. If you oppose such an order, you must file a written opposition with the Office of the Circuit Executive, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Suite 3700, Boston, Massachusetts 02210, which must be received within 42 days of the date of this order.

Until this show cause proceeding is resolved, any new judicial misconduct complaint that you file will be held in abeyance. If an order of preclusion is entered, any such new complaint will be returned to you without prejudice to your right to resubmit it after obtaining prior permission from the Judicial Council. This order does not affect your rights under the Rules of Judicial-Conduct in the pending matter.

5/31/16

Date



Susan Goldberg, Secretary