

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-10-90024, 01-10-90025, and 01-10-90026

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MARCH 21, 2011

Complainant, a pro se litigant, filed a complaint against three appellate judges alleging they had violated the Judicial Conduct and Disability Act, 28 U.S.C. § 351 (a). The complainant alleges that the judges engaged in misconduct while presiding over the appeal from the complainant's criminal conviction.

The complainant's criminal proceeding was the subject of a previous misconduct complaint that the complainant filed in 2008 against the district judge who presided over that matter. See Misconduct Complaint No. 01-08-90011. The complainant had alleged, in part, that the judge had issued erroneous rulings that evidenced his bias against the complainant. By order, dated July 17, 2008, I dismissed Complaint No. 01-08-90011, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See Lynch, C.C.J., Order, In Re: Complaint No. 01-08-90011, July 17, 2008. The First Circuit Judicial

Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-08-90011, January 29, 2009.

The complainant's present allegation that the presiding appellate panel engaged in misconduct is based on his contention that it ruled prematurely in the complainant's case. But that is not true. The complainant states that the Court allowed the government's motion to extend the time in which to file its brief but then improperly ruled on the case - - affirming the dismissal of the complainant's motions challenging his conviction -- before the government had submitted the pleading. The complainant concludes that this ruling violated cited case law, constituted misconduct, and requires the Court to "recall its mandate."

The misconduct complaint is baseless. The reviewed record -- including the complaint, the docket, and relevant court orders -- demonstrates that the Court entered judgment in the case in response to the government's motion for summary disposition of the appeal. The complainant had filed an opposition to this motion before the Court ruled on it. No plausible claim of misconduct can arise from this sequence.

The Court was under no legal or ethical obligation to await further briefing from the government before ruling on the government's motion for summary disposition. The complainant is in disagreement with the substance of the judgment entered in the case. That does not, without more, constitute a claim of cognizable misconduct. "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or . . . ruling. An allegation that calls into question the correctness of a judge's

ruling, . . . without more, is merits-related." See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A). Accordingly, the complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), and Rule 11(c)(1)(C).

For the reasons stated, Complaints Nos. 01-10-90024, 01-10-90025, and 01-10-90026 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

3/21/11
Date

Sandra L. Lynch
Chief Judge Lynch