

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90027

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MARCH 17, 2016

Complainant, an incarcerated criminal defendant, has filed a complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge has exhibited a personal bias against him in presiding over his criminal proceeding. The misconduct complaint is baseless and not cognizable.

Complainant alleges that the judge harbors a personal bias against complainant due to complainant's ongoing attempts to raise the "highly mitigating circumstances" that precipitated his indictment. Complainant asserts that the judge has consistently and "deliberately ignored" this evidence, as well as complainant's valid claims of ineffective assistance of counsel, his requests for a certificate of appealability, and his timely motion for relief from judgment under Fed.R.Civ.P. Rule 60(b). Complainant concludes that, motivated by this bias, the judge has wrongfully denied numerous "highly meritorious"

motions that complainant filed, all without "hearing or comment," and requests that his case be reassigned to another judge.

As an initial matter, the judicial misconduct complaint process does not provide an avenue for obtaining an order in a pending or closed case, including the recusal of a judge or the reassignment of 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.

Moreover, the misconduct complaint is baseless. There is no information in the complaint or in the reviewed record suggesting that the judge was biased or improperly motivated in imposing complainant's initial sentence, ruling on complainant's subsequent motions, or otherwise in presiding over the case. Despite complainant's assertion to the contrary, the judge explicitly recognized the existence of "mitigating factors" during the sentencing hearing. Complainant was afforded several other hearings, as well, after he was subsequently charged with violating the conditions of release.

The court's orders on several of complainant's motions included explanatory memoranda. In denying complainant's motion to vacate, under 28 U.S.C. § 2255, the judge adopted a magistrate judge's five (5) page report and recommendation rejecting complainant's ineffective assistance of counsel claims. The judge then issued a three (3) page order denying complainant's request for a certificate of appealability on this ruling. As to the motions that were summarily denied, including the motion for relief from judgment, other requests for a certificate of appealability and several motions pertaining

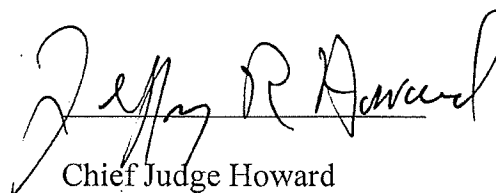
to complainant's release revocation proceedings, there is no legal or ethical obligation to provide a hearing on every motion or to justify every ruling with a memorandum of decision. As there is no evidence of bias or other judicial impropriety, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Insofar as the misconduct complaint is based exclusively on complainant's disagreement with the judge's rulings, including the original sentence and orders on complainant's subsequent motions, it is dismissed as directly related to the merits. See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also id., 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 No. 01-15-90027 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

3.17.16

Date


Chief Judge Howard