

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-16-90004

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: APRIL 5, 2016

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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 engaged in misconduct in sentencing complainant. The misconduct complaint is baseless and not cognizable.

Complainant alleges that, in imposing a sentence higher than that recommended in complainant's plea agreement, the judge engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts," and treated complainant in a "demonstrably egregious and hostile manner," as provided in Rule 3 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct). Complainant asserts that the sentence lacked "legal footing" and was based on the judge's "personal opinion, assumptions about [complainant's] intent that [were] never prosecuted nor proven, references to God," and the judge's "bias/prejudice . . . throughout the course of the proceedings."

Complainant observes that, in his appellate brief, counsel did an "excellent job of extracting the pertinent parts of the record illuminating the egregious and prejudicial" conduct of the judge. Complainant asks that a special committee be appointed and requests that any further post-conviction proceedings be assigned to a different judge.

As an initial matter, the judicial misconduct complaint process does not provide a mechanism for obtaining the recusal 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 and 20.

Moreover, there is no evidence in the reviewed record - including the misconduct complaint, the transcript of the sentencing hearing, and complainant's appellate brief - suggesting that the judge was biased or hostile in sentencing complainant. During the sentencing hearing, the court reviewed complainant's criminal history and the terms of the plea agreement before hearing in full from defense counsel and complainant. When the court asked complainant what he had intended to do with the weapon found in his possession, complainant replied that he "wasn't going to do anything with it."

The prosecutor explained that complainant had indicated, during plea negotiations, that he had intended to exchange the weapon for drugs. Noting that "only God knows the reason" for complainant's possession of the firearm, the judge remarked on the need to protect the public and imposed a sentence significantly longer than that recommended in the plea agreement.<sup>1</sup> Taken in context, the judge's statement, like the rest of the reviewed record, is not suggestive of any bias, illicit motive or hostility on the part of the judge.

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<sup>1</sup> Although not relevant to the resolution of the present matter, the Court of Appeals affirmed the sentence imposed by the district court.

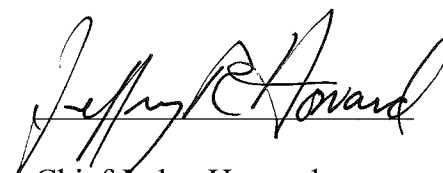
Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Insofar as the misconduct complaint is based exclusively on complainant's disagreement with the sentence imposed by the court, 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 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 No. 01-16-90004 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.

4-5-16

Date

  
Chief Judge Howard