

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90006 and 01-16-90007

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 18, 2016

Complainant, the defendant in a criminal prosecution and respondent in a civil proceeding, filed a complaint, under 28 U.S.C. § 351(a), against two district judges in the First Circuit. Complainant contends that the judges who presided over each of complainant's cases conspired with counsel and engaged in other wrongdoing. The misconduct complaint is baseless and not cognizable.

As to the criminal matter, complainant alleges that the judge conspired with the prosecuting attorney and one of complainant's appointed lawyers to charge complainant based on a "false indictment." Complainant asserts that documents submitted with the misconduct complaint demonstrate that the underlying indictment was fraudulent. Complainant maintains that, after finally dismissing the faulty indictment against him, the judge improperly ordered complainant confined on "dangerousness" charges.

Complainant alleges that the other district judge, who presided over complainant's civil proceeding, lacked jurisdiction and unlawfully ordered complainant committed for dangerousness. Complainant takes issue with rulings that the judge made over the course of the proceeding concerning complainant's criminal history, the appointment of counsel and an order dismissing the case that the court issued after the order of commitment. Complainant contends that the judge's erroneous decisions were the product of ethnic bias and a conspiracy with counsel on the case. Complainant further alleges that, during a status conference, this judge made a "personally derogatory remark[]." Finally, complainant claims that, at another hearing, the judge "watched" while complainant was "assaulted" by court security personnel.

Review of the complaint and the lengthy record of both cases fails to lend any support to complainant's conclusory claims of impropriety by either of the judicial officers involved in the proceedings. Shortly after complainant was indicted on the criminal charge, the judge assigned to the criminal proceeding allowed the parties' joint motion for an evaluation of complainant's competency to stand trial. The judge noted that complainant had personally assented to this motion. Over the course of the following year, the judge heard from multiple experts on complainant's competency. The court ultimately determined that complainant was not competent to stand trial and that, based upon expert testimony, complainant could not be restored to competency. The court ordered complainant's continued detention pending an assessment for dangerousness. This case was subsequently dismissed.

Complainant offers no facts in support of his claim that the judge who presided over the criminal matter conspired with the lawyers on the case to unlawfully indict and prosecute complainant. As the record is devoid of any evidence of wrongdoing, the allegations against this judge are 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).

Insofar as the misconduct complaint against this judge is based on complainant's objections to the substance of the court's rulings issued in this case, including but not limited to the orders finding complainant incompetent and mandating his detention, it is not cognizable. See 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."). Accordingly, the allegations against this judge are dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Shortly after complainant was found to be incompetent in the criminal matter, a civil commitment proceeding was initiated. Despite complainant's requests to appear pro se, the judge determined that legal precedent compelled the appointment of counsel because complainant had been found to be incompetent. After a lengthy evidentiary hearing at which multiple experts testified, the judge issued a detailed order finding that complainant met the dangerousness standard for civil commitment. The court ordered

the submission of subsequent reports on complainant's continued need for hospitalization, appointed a legal guardian for complainant and recommended that complainant be appointed counsel on appeal.

Complainant's claims of bias and conspiracy by this judge are based exclusively on his objections to the substance of the judge's rulings and, as such, do not suggest cognizable misconduct. Complainant objects to the court's final order of commitment, as well as to ancillary rulings concerning the exercise of jurisdiction, the appointment of counsel, complainant's criminal history and the order of dismissal. Complainant's disagreement with these rulings does not alone constitute evidence of bias or other cognizable misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(A), *supra*. Accordingly, these allegations are dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Complainant's remaining claims against this judge are equally unfounded. The judge did not, at the referenced status conference, make the "personally derogatory remark[]" that complainant alleged. The transcript of this conference, which took place shortly after the commitment petition was filed, demonstrates that the judge inquired as to the basis for the government's assertion that complainant was dangerous. The judge's question was not a "personally derogatory remark" and discussion of complainant's criminal history was appropriate in the context of the issues before the court. Accordingly, this claim 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).

Complainant's final contention - that the judge "watched" as complainant was allegedly assaulted by court security personnel - is not indicative of misconduct. The record confirms that, during the referenced hearing, there was an incident in which security personnel removed complainant from the courtroom after he lost his temper and uttered expletives. The judge's observation of this incident was not remotely indicative of wrongdoing. See Howard, C.C.J., In Re Complaint No. 01-15-90012, October 7, 2015, at 4, *citing* Boudin, C.C.J., Order, In Re Complaint No. 429, June 12, 2006, at 4 ("A judge must exercise reasonable discretion of his or her courtroom environment."). Accordingly, this claim is dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint Nos. 01-016-90006 and 01-016-90007 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii) and (iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A), (B), (C) and (D).

July 18, 2016
Date

Jeffrey R Howard
Chief Judge Howard