

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-19-90028 and 01-19-90029

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: MAY 4, 2020

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Complainant has filed a complaint under 28 U.S.C. § 351(a) against a district judge and a then magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with complainant's criminal case over which the judges presided. The misconduct complaint is baseless and is not cognizable.<sup>1</sup>

Complainant alleges that the judges were biased against complainant and conspired with a United States Attorney to prosecute complainant illegally based on a faulty indictment. Complainant maintains that both judges were negligent and concealed the illegality of the indictment. Complainant contends that, although it was signed by the U.S. Attorney, the indictment was deficient because it lacked the signature of the Assistant U.S. Attorney who was present during the grand jury proceedings.

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<sup>1</sup> Complainant names only the district judge and the magistrate judge as subject judges. Although he does not identify them as subjects of the complaint, complainant also levies various allegations against two retired judicial officers, as well as against a former United States Attorney and complainant's defense attorney. As the judicial misconduct complaint procedure applies only to current federal judges, complainant's other allegations are not addressed. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 1(b).

Complainant suggests that the absence of this signature indicates that the Assistant U.S. Attorney did not agree with the grand jury's decision to bring charges and that, therefore, the judges should not have accepted the indictment or allowed the case to proceed.

Complainant further alleges that the district judge improperly failed to dismiss the indictment when a second Assistant U.S. Attorney, who was not present at the grand jury proceedings, appeared at a status conference in complainant's case. Complainant seems to suggest that the appearance of an Assistant U.S. Attorney who did not attend the original grand jury proceeding somehow invalidated the prosecution. Finally, complainant contends that by approving a superseding indictment containing several additional charges, signed by the U.S. Attorney and by the second Assistant U.S. Attorney, the magistrate judge improperly "legalize[d]" the second Assistant U.S. Attorney's participation in the proceeding.

The reviewed record, including the misconduct complaint, the dockets of the district court and appellate proceedings, and the courts' orders, provides no evidence for complainant's allegations of bias or other judicial misconduct. The record indicates that complainant was indicted on multiple charges relating to abuse of public office. Complainant states that the U.S. Attorney and an Assistant U.S. Attorney appeared at the grand jury proceedings, and provides a certified copy of the original indictment signed by the U.S. Attorney and the foreperson of the grand jury. Subsequently, a second Assistant U.S. Attorney appeared on the government's behalf at a status hearing before the district judge.

The record further indicates that the grand jury returned a superseding indictment with over a dozen counts, adding three additional charges to those included in the original indictment. The magistrate judge presided over complainant's arraignment on these charges. After a multiple-day trial before one of the retired judges who is not a subject of the complaint, see note 1, supra, the jury found complainant guilty of all but two of the charges. The court sentenced complainant to several years of imprisonment and ordered payment of restitution. Complainant appealed multiple times; the Court of Appeals affirmed complainant's convictions and ultimately affirmed the sentence.

Complainant's allegations that the two subject judges were improperly motivated, conspired to prosecute complainant illegally based on faulty indictments, or engaged in any other wrongdoing are wholly unsubstantiated. Complainant presents no basis for the claim that the indictments were defective, based on their signatures or for any other reason.<sup>2</sup> Furthermore, even if true, this claim alone, without any evidence of improper judicial motivation, would not suggest cognizable misconduct.<sup>3</sup> Nor does the appearance of a second Assistant U.S. Attorney demonstrate judicial wrongdoing. As complainant's allegations of judicial bias and conspiracy are presented without any basis in fact and amount to nothing more than challenges to the substance of the indictments that precipitated complainant's lengthy criminal proceedings and multiple appeals, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii),

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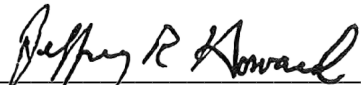
<sup>2</sup> The applicable federal rule provides that "[t]he indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." Fed. R. Crim. P. 7(c).

<sup>3</sup> Although not necessary to the resolution of the complaint, it does not appear that complainant challenged the legality of either indictment in district court or on appeal.

and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D), Rule 11(c)(1)(B), and Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including failure to recuse. If the decision or ruling is alleged to be the result of an improper motive, . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision.").

For the reasons stated, Complaint Nos. 01-19-90028 and 01-19-90029 are 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).

May 4, 2020  
Date

  
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Chief Judge Howard