

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-21-90013

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BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 28, 2022

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with complainant's criminal case over which the judge presided. The misconduct complaint is baseless, is not indicative of misconduct, and is not cognizable.

Complainant alleges that the judge was "prejudi[ced] . . . and made biased statements" against complainant. Specifically, complainant asserts that the judge made a comment suggesting that complainant's continuing to appear pro se at trial would result in conviction, a statement that complainant alleges was "inappropriate [and] partisan." Complainant also asserts that the judge was "biased" and "prejudicial" when the judge observed that complainant's request for representation (seeking standby counsel pretrial and then trial counsel) was unusual. Complainant asserts that the judge "treated [complainant] unfairly" by delaying resolution of complainant's request for representation and the scheduling of complainant's trial, and that the judge "prolonged [complainant's]

legal matter, without justification" when the judge rescheduled an evidentiary hearing on complainant's motion to suppress.

The record, including the misconduct complaint, the transcripts of the relevant status conferences, and the docket, provides no basis for complainant's allegations of judicial misconduct. After complainant was charged pursuant to a superseding indictment on numerous drug charges, he filed a series of pro se motions to suppress evidence, which the government opposed. The court held a sealed status conference, at which complainant appeared with standby counsel.<sup>1</sup> At the conference, complainant explained that he would like to retain his current standby counsel for pretrial purposes, but requested that standby counsel be appointed as trial counsel in the event that one was scheduled; standby counsel explained that he was uncomfortable with the proposed arrangement. The judge explained that, because of the extensive preparation required in advance of a trial, the court was not inclined to appoint bifurcated representation for complainant, and provided complainant an opportunity to explain his request. After complainant did so, the judge replied that the court would consider the unusual request, noting that, it was the court's opinion that, if complainant proceeded pro se, the trial would result in a conviction, and explained that the court and the parties would further discuss the issue before or at the next status conference.

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<sup>1</sup> This standby counsel was complainant's fourth appointed counsel in this matter. This counsel was appointed as standby at complainant's request.

At the next scheduled status conference, complainant appeared with standby counsel, the court and the parties discussed pending motions, and the court scheduled a further status conference and tentatively scheduled an evidentiary hearing on complainant's motions to suppress. See supra p. 2. Complainant did not raise the issue of his representation at this status conference.

At the next scheduled status conference, at which complainant again appeared with standby counsel, the judge stated that complainant's representation request would be referred to a magistrate judge and that the court would defer the scheduling of trial until resolution of the representation issue. The judge further noted that, although the court had a full schedule, the judge could reschedule a civil trial if needed, to accommodate complainant's trial. On the same day, the judge referred the representation matter to a magistrate judge, who appointed counsel for complainant. In light of the appointment of counsel, the judge rescheduled the evidentiary hearing to later that month.

There is no evidence to support complainant's allegations that the judge was prejudiced or biased against complainant or "treated [complainant] unfairly," either with respect to complainant's request for representation or otherwise in presiding over his case. To the contrary, the record indicates that the judge allowed complainant a full and fair opportunity to address the court regarding his request for counsel and clearly explained the court's concerns before referring the matter to the magistrate judge for resolution. See supra pp. 2-3.

The judge's reference to the unusual nature of complainant's representation request and the judge's remark suggesting that proceeding pro se would be imprudent are in no way indicative of bias or other wrongdoing. See Boudin, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 444, January 23, 2007 (providing that the expression of the court's views, based on the record, do not alone indicate misconduct); and Judicial Conference Committee on Codes of Conduct, Advisory Opinion No. 66, June 2009 ("Opinions formed by a judge on the basis of facts introduced or events occurring in the course of current or prior proceedings ordinarily do not constitute a basis to show bias or partiality."). Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(D) and 11(c)(1)(A), respectively.

As there is no evidence of bias or improper motive, complainant's allegations that the judge delayed resolving complainant's representation request or conducting complainant's evidentiary hearing or trial are dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-21-90013 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D), respectively.

October 28, 2022

Date



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Chief Judge Barron