

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90098

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 17, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit, who has dismissed his federal case, articulating a number of legal principles which supported dismissal. The federal court action was brought after the complainant had been unsuccessful in an action he filed in state court. The complainant alleges that the judge exhibited bias and engaged in impropriety in connection with the complainant's civil action.

The complainant charges that the judge “engaged in . . . unbecoming [conduct] . . . , detrimental to the sanctity and authority of the Court, [and] prejudicial to the effective administration of justice.” The complainant asserts that the judge violated Canons 1, 2, and 3 of the Code of Conduct for United States Judges by engaging in “[e]gregious, unconscionable [and] hostile conduct” reflective of the judge’s “personal subjective intents, [and] a willful indifference to the law [and the complainant’s] rights”

The complainant argues that the order of dismissal issued in the case “[e]xhibited [the judge’s] partisan interests,” because it was so “far removed from well settled and established judicial principles as to constitute malfeasance” The complainant contends that the judge intentionally misrepresented the law and the Constitution and that the court’s orders were “couched in threats and intimidations” that were “indicative of [the judge’s] predisposition, bias and prejudice” For example, the complainant states that the judge warned him that “an appeal will not be taken well,” and that this statement was “intimidating and vindictive in nature”

The complainant further asserts that the judge wrongfully mischaracterized his legal claim, (as seeking “to reverse or modify a state court judgment,” when the complainant, in fact, sought to demonstrate that the state court lacked jurisdiction), and improperly stated that the complainant was “a prisoner.” The complainant concludes that the judge’s partiality was a product of the judge’s relationships with the defendants in the case, as well as with two other federal judges, each of whom had presided over another of the complainant’s cases.

Finally, the complainant charges that the judge wrongfully failed to take appropriate action in response to unprofessional conduct by the judges and lawyers named as defendants in the proceeding, and failed to withdraw from the proceeding, despite “prior associations with [the] defendants.” The complainant cites miscellaneous case law, and includes copies of correspondence, as well as information on three federal district judges, including the subject judge, purportedly obtained from a website. Court records indicate that the complainant has filed four civil cases, since 1994, each of which was presided over by a different district judge.

A review of the case docket, relevant pleadings and the court’s orders indicates that, several weeks after the complainant filed the civil complaint and motion to proceed in forma pauperis (IFP),

the judge allowed the IFP motion. Shortly thereafter, the judge issued a lengthy memorandum and order of dismissal. In the memorandum and order, the judge reviewed one of the complainant's previous cases, as well as the state court litigation that precipitated both matters. The judge then outlined the applicable legal principles before dismissing the case sua sponte. The court determined that: (1) it lacked subject matter jurisdiction; (2) the complainant's claims were barred by the "Rooker-Feldman doctrine;" (3) the court lacked jurisdiction to grant the requested mandamus relief; and (4) both absolute judicial immunity and "quasi-judicial immunity" foreclosed the complainant's claims.

The judge added that, since the complainant's claims were "nothing more than yet another attempt to circumvent the rulings of the state court . . . , he risks being enjoined from litigating in this Court." Finally, the judge certified, pursuant to the applicable provision of the IFP statute, that "any appeal taken by plaintiff of the dismissal of this action would not be taken in good faith." See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith"), and Fed. R. App. P. 24(a)(3). The complainant subsequently filed several motions which the court denied.

There is no basis for the complaint. The reviewed materials provide no facts indicating that the judge was improperly motivated or "vindictive" in consideration of the matter. To the contrary, the judge's lengthy memorandum and order notes that pro se pleadings are to be construed generously, and reflects the judge's detailed attention to the specific facts in light of the governing law. As the complaint and relevant case materials lack any evidence that the judge was "hostile" to the complainant's claims, improperly influenced (by alleged relationships with the defendants or others), or otherwise harbored an illicit motivation in connection with the proceeding, the complaint

is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

The judge's order in this matter is not in the least suggestive of bias. Insofar as the complaint's charges are based upon his disagreement with the order of dismissal, and/or with other orders issued in the case, they are also dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Further, even assuming that the judge told the complainant that "an appeal will not be taken well," such statements would not, on the present facts, be remotely suggestive of judicial wrongdoing. Nor was the judge under any legal or ethical duty to take action against the defendants for any unproven impropriety or to withdraw from the proceeding. Finally, while violations of the Code of Conduct may be relevant to considerations of judicial misconduct, see Rules of Judicial Misconduct, Commentary on Rule 3, the present complaint suggests no violations of the Code, much less of the judicial misconduct statute. Accordingly, the misconduct complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No. 01-08-90098 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

2/17/09
Date

Sandra L. Lynch
Chief Judge Lynch