

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90003

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 5, 2017

Complainant has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with the judge's ruling on a request to extend a temporary restraining order (TRO). The misconduct complaint is baseless and not cognizable.

Complainant asserts that the judge acted with bias in denying a request to extend a TRO enjoining certain administrative agency action in a proceeding, filed by two individuals who have no apparent relation to complainant. Complainant further asserts that the judge acted "angrily" during a hearing on the request to extend the TRO.

Complainant's allegations are baseless. The reviewed record, including the misconduct complaint, the docket of the proceeding, the transcript of the hearing, and the

judge's memorandum and order denying the continuation of the TRO, is devoid of any information suggesting that the judge was biased or otherwise engaged in misconduct.

The reviewed record indicates that two petitioners/plaintiffs, who were the subjects of the administrative agency action, filed a petition for a writ of habeas corpus and a complaint requesting that the district court issue an injunction prohibiting further administrative agency action against the petitioners/plaintiffs or similarly situated individuals. A district judge and magistrate judge, neither of whom are the subject of this complaint, held a hearing and, subsequently, issued the TRO, which included variations of the requested relief.

Pursuant to the TRO, the subject judge scheduled a hearing on the status of the TRO before its expiration. Prior to the hearing, the defendant submitted an opposition to the continuation of the TRO, and the plaintiffs and intervenors filed separate requests to extend the TRO.

The transcript of the hearing on the TRO demonstrates that the judge gave the plaintiffs' and the government's counsel ample opportunity to present their claims and for rebuttal, and questioned counsel for both sides.

Following the hearing, the judge issued a lengthy memorandum and order, in which the court denied the request to renew the TRO, in part, due to lack of standing and the plaintiffs' failure to demonstrate a likelihood of success on the merits. In determining that an extension of the TRO was not warranted, the judge explained the relevant legal

standard, objectively set out the plaintiffs' arguments, and applied the governing standard to each of the plaintiffs' claims.

The transcript of the hearing also lends no support to the claim that the judge was hostile or otherwise spoke improperly. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner . . ."). To the contrary, the judge was patient and respectful; the judge allowed the parties to present their arguments, asked relevant questions, and took the matter under advisement. The judge's conduct at the hearing "do[es] not even approach 'the sort of deep-seated unequivocal antagonism that may constitute misconduct.'" See Lynch, C.C.J., Order, In re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at p. 6, quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011). As there is no evidence of bias or other judicial impropriety, 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).

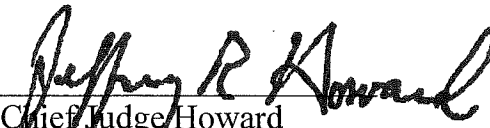
Insofar as the misconduct complaint is based exclusively on complainant's disagreement with the judge's ruling on the request to extend the TRO, the complaint is not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly 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 complaint is

dismissed 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. 01-17-90003 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

7/5/2017

Date


Chief Judge Howard