

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-20-90019, 01-20-90020, 01-20-90021,
01-20-90022, AND 01-20-90023

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 30, 2021

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against five appellate judges in the First Circuit.¹ Complainant alleges judicial misconduct in connection with his five civil appeals. The misconduct complaint is baseless and is not cognizable.²

In his protracted submission, complainant alleges that the subject judges were improperly motivated in presiding over and ultimately dismissing his appeals.

Complainant contends that defendants engaged in "clear violation[s]" of law and that the

¹ Complainant also named a deceased judge as a subject of the complaint. As the judicial misconduct complaint procedure applies only to current federal judges, the complaint was not accepted against the deceased judge, and any allegations against the judge 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).

² The Judicial Council has authorized me, as Chief Circuit Judge, to dispose of the present matter on the merits "in the interest of sound judicial administration." See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 25(f) ("If all circuit judges in regular active service are disqualified, the judicial council may determine whether . . . in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.").

Court's' rulings demonstrate that the judges were "prejudice[d]" against complainant and his wife. Complainant asserts that the judges "deliberately ignored" evidence against defendants, "covered-up" their crimes, and "deliberately" violated procedural rules and declined to followed precedent. Complainant suggests that some of the subject judges recused from his appeals only to ensure that there were too few judges to rule on complainant's motions to transfer his appeals to another circuit.

Complainant further alleges that, because a relative of one of the subject judges had a professional relationship with parties to complainant's second appeal, all of the subject judges were disqualified from presiding over all of complainant's appeals. Complainant adds that the judges presiding over this appeal "rubber-stamped" the district court's dismissal of the case in order "to protect" the judge whose relative had a professional relationship with the parties and to "unjustly enrich" the parties.³ Complainant also contends that the judges erroneously ruled that his third appeal was untimely.

Complainant further alleges that, by presiding over his fourth appeal, a case which complainant had filed against the First Circuit Court of Appeals and a number of appellate judges, the subject judges violated federal law (28 U.S.C. § 144, 28 U.S.C. § 455) and Canons 1 through 3 of the Code of Conduct for U.S. Judges (Code of Conduct).⁴

³ The judge whose relative had a professional relationship with the parties to complainant's second appeal did not participate in the proceeding. See infra note 6.

⁴ Title 28 U.S.C. § 144 provides for a district judge's recusal upon the filing of "a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against [the filer] or in favor of

Complainant asserts that the judges were "patently malicious" in dismissing his fifth appeal, a case in which complainant challenged a state court decision, for lack of subject matter jurisdiction. Complainant adds that the "Court deliberately ignored . . . legislative history" and failed to cite any relevant caselaw or precedent in its judgment in this case in order to "vindicate itself and its judicial officers."

Finally, complainant also alleges that the judges engaged in "patent obstruction of justice" in denying his motions to transfer the fourth and fifth appeals to another circuit, and that the judges "defiantly and belligerently" denied complainant's petitions for rehearing and renewed motions to set aside the judgments and to transfer these cases.

The reviewed record, including the misconduct complaint and the dockets and orders of the relevant proceedings, provides no basis for complainant's conclusory allegations of judicial misconduct. According to the record, complainant and his wife appealed the district court's dismissal of their civil case, alleging, inter alia, malicious prosecution in connection with a state court action against complainant (the first appeal). While this appeal was pending, complainant and his wife appealed the district court's dismissal of another of their civil cases, alleging wrongdoing in connection with the same state court proceeding (the second appeal).⁵ Complainant filed a submission in both appeals asserting that certain defendants/appellees in the latter proceeding had a

any adverse party," and 28 U.S.C. § 455 provides for a judge's recusal from "any proceeding in which [the judge's] impartiality might reasonably be questioned." The cited provisions of the Code of Conduct require federal judges to "uphold the integrity and independence of the judiciary," "avoid impropriety and the appearance of impropriety in all activities," and "perform the duties of the office fairly, impartially[,] and diligently." See Code of Conduct, Canons 1, 2, and 3, respectively.

⁵ In both the first and second appeals, complainant appeared pro se, and his wife was represented by counsel.

professional relationship with a family member of one of the subject judges.⁶ The Court of Appeals affirmed the district court's respective judgments in both of these cases, after de novo review and largely for the reasons relied upon by the district court. Complainant filed petitions for panel rehearing and for rehearing en banc in the first appeal, and a petition for rehearing en banc in the second appeal, all of which the Court denied.

Several years later, complainant appealed a number of district court orders in a civil case complainant had filed challenging the outcome of the state court action that was the subject of the first and second appeal (the third appeal).⁷ Over complainant's objection, the Court of Appeals granted appellees' motion for summary disposition, explaining that the appeal was untimely. Several days later, complainant filed a motion to vacate the judgment, which the Court construed as a petition for panel rehearing and denied. After mandate issued, complainant continued to file pleadings seeking relief from the Court's judgment dismissing the appeal; the Court denied these requests and ordered that no further filings be accepted from complainant in the case.

Subsequently, complainant filed pro se an appeal of the dismissal of a civil case that complainant had filed in the district court against the Court of Appeals and several of its judges, in which he challenged the judges' dismissal of the third appeal (the fourth

⁶ The docket of the first appeal indicates that, before complainant filed the second appeal, this judge issued a procedural order in the first appeal and subsequently recused from the matter. The docket of the second appeal indicates that the judge recused from the matter.

⁷ Complainant appeared pro se in the third appeal.

appeal).⁸ The Court summarily affirmed the dismissal of the case for the reasons provided by the district court and, citing relevant case law, explained that, although complainant named the Court and several of its judges in the matter, the panel, which did not include any judges that were parties to the case, was not disqualified.⁹

Complainant filed two motions to set aside the judgment and to transfer the case, in which he asserted that all of the Court's judges were disqualified from the appeal because the Court and several of its judges were parties, both of which the Court denied. Complainant filed a petition for rehearing en banc, which the panel assigned to the appeal construed also as a petition for panel rehearing and denied. Explaining that there was no quorum of active judges who were not recused, the Court also denied the request for rehearing en banc.¹⁰ After mandate issued, complainant filed two motions requesting recall of mandate and to transfer his appeal to another circuit; the Court denied the motions and ordered that no additional filings be accepted in the appeal.

Complainant and his wife also filed pro se an appeal of the district court's dismissal of another civil case that they had filed challenging a state court decision related to a real property dispute (the fifth appeal). Complainant and a number of appellees submitted briefs, and several other appellees filed a motion for summary disposition. The presiding panel reviewed the issues de novo, considered complainant's

⁸ The docket indicates that the judges who were defendants/appellees in the fourth appeal, as well as the judge whose family member complainant asserted had a professional relationship with parties to the second appeal, recused from the fourth appeal.

⁹ See supra note 8.

¹⁰ See supra note 8.

arguments, and granted the motion for summary disposition, explaining that the district court did not have jurisdiction over complainant's case, which was predicated on challenges to a state court decision.

Complainant filed a petition for rehearing en banc and a motion to transfer the case to another circuit. The Court issued an order explaining that the petition for rehearing en banc was also treated as a petition for rehearing before the original panel, and denied the petition for panel rehearing, the petition for rehearing en banc (because there was no quorum of active circuit judges who were not recused), and all pending motions as moot.

Shortly thereafter, complainant filed a renewed motion to set aside the Court's judgment dismissing the appeal and to transfer the case to another circuit, which the Court denied. After mandate issued, complainant filed a motion to recall mandate, arguing that the judge whose relative had a professional relationship with parties to the second appeal should have recused from the fifth appeal, and a motion to transfer the case. The Court denied both motions and directed the clerk not to accept additional filings in the appeal.

The complaint is meritless. Complainant and the record of complainant's proceedings provide no facts suggesting that any of the judges were improperly motivated in presiding over complainant's appeals. There is no information suggesting that the judges overlooked violations of law by defendants/appellees and, despite complainant's assertion to the contrary, the Court's rulings do not themselves substantiate

otherwise unsupported claims of judicial bias or prejudice. There is likewise no evidence that the presiding judges intentionally violated procedural rules, "deliberately" or "malicious[ly]" misapplied applicable caselaw, ignored legislative history, "rubber stamped" or affirmed the district court's decisions without due regard to the record, or sought to protect one of the subject judges or benefit any parties to the appeals. Rather, the record demonstrates that the judges considered the merits of complainant's pleadings and consistently provided the bases for their rulings. See supra pp. 4-6.

Complainant also fails to support the claims that any of the judges harbored a conflict of interest that warranted their recusal from the appeals in which they participated, under the Code of Conduct or the relevant statutes, let alone that constituted misconduct.¹¹ The record demonstrates that the judge whose family member complainant asserted had a professional relationship to parties to the second appeal recused from three of complainant's proceedings. See supra p. 4 and notes 3, 6, and 8. Complainant provides no facts that would indicate that this judge had any legal or ethical obligation to recuse from the one appeal in which the judge participated (the fourth appeal). See, e.g., Code of Conduct, Canon 3(C)(1) (providing grounds for questioning judge's impartiality). Any

¹¹A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); and Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules . . ."). Likewise, "[a]lthough a violation of the disqualification statute, 28 U.S.C. § 455(a), is not automatically a violation of the Judicial Misconduct statute, conceivably a sufficiently egregious violation, especially if coupled with evidence of bad faith, might in some circumstances rise to the level of judicial misconduct." See Boudin, C.C.J., Order, In Re: Complaint No. 362 (Dec. 16, 2003) (citation omitted).

allegation that the other subject judges should have recused from any of complainant's cases because of their colleague's conflict of interest is also legally and factually unsupported. See id.

Further, in its order dismissing the fourth appeal, the Court provided clear and uncontroverted grounds for its determination that the judges who participated in the proceeding in which several Court of Appeals judges were appellees were under no obligation to recuse from that appeal. See supra p. 5. See also Swan v. Barbadoro, 520 F.3d 24, 26 (1st Cir. 2008) (per curiam) (denying a motion to recuse the panel of circuit judges, where the motion was based on the fact that three circuit judges, who were not members of the panel, were defendants/appellees, and where the claims against defendants/appellees were frivolous).

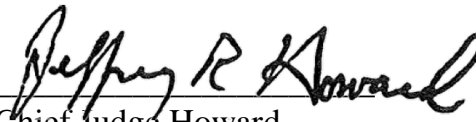
Finally, complainant's contention that the judges recused from his appeals in order to avoid transferring them to another circuit is flawed, as the Court ruled on complainant's requests for transfer, albeit not in his favor, and complainant offers no reason to infer that the participation of more judges would have precipitated different results. Accordingly, 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).

Where, as here, there is no evidence of improper motive, complainant's objections to the Court's rulings -- including, but not limited to, the rulings dismissing his appeals and denying his motions and petitions for rehearing, as well as the judges' decisions regarding recusal, are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of

Judicial-Conduct, Rule 11(c)(1)(B); see also Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. . . . If the decision or ruling is alleged to be the result of an improper motive . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."). 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, the misconduct complaint 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, Rules 11(c)(1)(B) and 11(c)(1)(D).

September 30, 2021
Date


Chief Judge Howard