

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-21-90008

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: APRIL 28, 2021

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against an appellate judge in the First Circuit. Complainant alleges that the judge engaged in judicial misconduct in dismissing three of complainant's previous misconduct complaints.<sup>1</sup> The misconduct complaint is frivolous and is not cognizable.

Complainant alleges that the judge "mismanag[ed]" and "railroad[ed]" his misconduct complaints against the appellate judges, see supra note 1, in violation of "the applicable laws and contrary to the evidence." Complainant asserts that the judicial misconduct complaints are "sufficiently self-explanatory and full of evidence," and

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<sup>1</sup> The present matter is complainant's seventh misconduct complaint. In 2000, after filing three baseless misconduct complaints against a then district court judge, the Judicial Council precluded complainant from filing any further misconduct complaints against that judge arising from the same case that was the subject of the complaints. See Order, Judicial Council of the First Circuit, In Re: Judicial Misconduct Complaint No. 289, December 6, 2000. Complainant's effort to show cause why this order of preclusion should be lifted was unsuccessful. See Order, Judicial Council of the First Circuit, In Re: Judicial Misconduct Complaint No. 289, April 9, 2002. Complainant subsequently filed three complaints of judicial misconduct against judges of the First Circuit Court of Appeals relating to the same underlying litigation. In the present matter, complainant challenges the order dismissing these misconduct complaints.

requests that the instant judicial misconduct complaint be transferred to another circuit because complainant "cannot have a fair and objective evaluation" in the First Circuit.

As an initial matter, the judicial misconduct complaint process does not provide for transfer to another circuit where, as here, no "exceptional circumstances" exist warranting a transfer. Cf. Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 26 (providing that in "exceptional circumstances" a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding), and id. Commentary on Rule 26 (explaining that transfer to another judicial council "may be appropriate, for example in the case of a serious complaint where there are multiple disqualifications among the original judicial council").

The misconduct complaint and the record of complainant's underlying misconduct proceeding are devoid of any information suggesting that the judge engaged in wrongdoing. The record indicates that complainant filed three misconduct complaints, each against one or more appellate judges who presided in complainant's appellate proceedings and/or dismissed his previous misconduct complaints against the district judge who handled his original litigation.<sup>2</sup> See supra note 1. Complainant alleged that the circuit judges conspired to undermine complainant's attempts to vindicate his rights, both in the appeals of his underlying district court litigation and in his related unsuccessful

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<sup>2</sup> Complainant also presented claims against others, including judges who were no longer on the bench or identified as subjects of the complaints. As the judicial misconduct complaint process only covers current federal judges who are properly identified in a complaint, these other claims were 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). See also Rules of Judicial-Conduct, Rule 3(h) ("Subject judge" means a covered judge, as described in Rule 1(b), who is the subject of a complaint.").

misconduct complaints, and overlooked the validity of his claims, in part due to his nationality.<sup>3</sup>

In the order dismissing the misconduct complaints, the judge concluded, based on a review of the record, that the complaints were baseless because complainant did not present a single fact indicating that any of the subject judges exhibited bias against complainant or conspired to interfere with complainant's claims. The judge concluded that, to the contrary, the voluminous record of complainant's litigation demonstrated that, for over 20 years, complainant had been accorded a full and fair opportunity to present his claims, in both his appellate proceedings and in his previous misconduct complaints. See supra note 3. Thus, the judge dismissed the complaints as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and, as there was no evidence of bias or improper motive, concluded that complainant's objections to the courts' orders, including the orders dismissing his prior misconduct complaints, were not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(D), Rule 11(c)(1)(B), 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 . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."), and id. Commentary on Rule 4 ("[A] complaint challenging the correctness of a chief judge's

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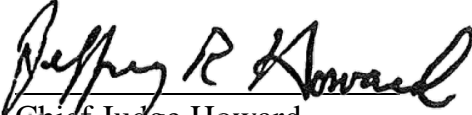
<sup>3</sup> Complainant has filed at least 15 civil proceedings in a federal district court and over 30 unsuccessful appeals in the First Circuit Court of Appeals, arising from complainant's claims challenging the constitutionality of an audit conducted of a school owned by complainant, and imposing fines and other sanctions. Over time, complainant's claims expanded to include all of the federal judges who ruled against him in the district and appellate courts, and in the related misconduct complaints against the presiding district judge. See supra note 1.

determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . .").

Complainant fails to allege, let alone provide any evidence, that the judge was improperly motivated in dismissing the misconduct complaints. Nor is there any support for the allegations that the judge "mismanag[ed]" or otherwise mishandled the complaints. As the complaint amounts to nothing more than a challenge to the judge's order dismissing complainant's misconduct complaints, it should be dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C), Rule 11(c)(1)(B), Rule 4(b)(1), and id. Commentary on Rule 4, supra.

For the reasons stated, Complaint No. 01-21-90008 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)(C).

April 28, 2021  
Date

  
Chief Judge Howard