

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-21-90012

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 9, 2022

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 a civil rights case over which the district judge presided.¹ The misconduct complaint is frivolous and is not cognizable.

The complaint includes general allegations that the district court in which complainant is a litigant and the First Circuit Court of Appeals have incarcerated complainant illegally and have "misle[d] justice." Complainant specifically alleges that the judge's order denying his motion to vacate, set aside, or correct his state criminal sentence was a "wrongful decision" that demonstrated that the judge was part of the

¹ Although he did not identify them as subjects of the complaint, as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), complainant includes, in the supporting documents, allegations against several other current or former district judges of the First Circuit. See Rules of Judicial-Conduct, Rules 1, 3(h), and 6. Complainant also identifies a retired district court judge of the First Circuit in the complaint form and included, in the supporting documents, allegations against a number of attorneys. Complainant was notified that the governing statute and the Rules of Judicial-Conduct provide for the filing of complaints against current federal judges only (who are properly identified as subjects of the complaint) and that, accordingly, his complaint was accepted only against the subject judge. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3.

"prosecution [] against [him]" and that the judge "refused to release [him] from an illegal custody[.]" Complainant implies that this order reflected the judge's conspiratorial intent.

The reviewed record, including the misconduct complaint, relevant attachments, and docket of the proceedings, provides no basis for complainant's conclusory allegations of judicial misconduct. Complainant initiated a civil rights case, alleging that defendant had wrongfully convicted complainant in state court. After complainant moved for the court to appoint counsel to represent him, the judge denied the motion and ordered complainant to either amend the complaint or show cause why his original complaint should not be dismissed for failure to state a claim. After the amended complaint was due, complainant filed a document detailing additional constitutional claims. Thereafter, complainant moved for a default judgment. After noting complainant's filing and denying the motion for default judgment, the judge entered an order dismissing the case.

The following year, complainant filed in the same case a motion to vacate, set aside, or correct his state criminal sentence. The judge denied the motion explaining that: (1) complainant sought to challenge a state court judgment under inapplicable statutory authority; and (2) complainant's petition was time-barred.

There is no information in the complaint or in the record to support complainant's conclusory allegations that the judge was part of the "prosecution [] against [him]" or was improperly motivated in issuing the order to which complainant objects or otherwise in presiding over complainant's civil rights case. To the contrary, the record indicates that the judge reviewed complainant's motion to vacate, set aside, or correct his sentence and

issued a reasoned ruling denying the motion. Further, this motion was filed more than a year after the judge had provided complainant an opportunity to address the deficiencies in his original complaint. Therefore, the complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

As there is no evidence of improper judicial motive or other wrongdoing, complainant's allegations amount to nothing more than challenges to the order denying the motion to vacate, set aside, or correct his state criminal sentence, and therefore, are not cognizable. See 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 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 to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — 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. 01-21-90012 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).

September 9, 2022

Date



Chief Judge Barron