

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-21-90014

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 23, 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 complainant's two civil cases over which the judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge acted with bias and made an "egregiously wrong" decision when the judge erroneously dismissed complainant's second case, and issued "inconsisten[t] and contradictor[y]" rulings in the orders dismissing both of complainant's cases. Complainant further alleges that the judge "paralyzed" complainant's second case by failing to rule on pending motions for many months and then, following the submission of complainant's petition for a writ of mandamus in the Court of Appeals, made decisions in "haste." Complainant asserts that, in dismissing the second case, the judge relied on the "false testimony" of a defendant in complainant's first case.

Complainant avers that, because the judge "knows" some of the state court judges who

are defendants in complainant's cases, the judge "lacks the necessary objectivity to conduct a fair trial." Complainant requests that the judge recuse from complainant's cases and that the cases be reassigned to another judge.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including the recusal of a judge or the reassignment of a case. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b). Further, the reviewed record, including the misconduct complaint and the dockets of the relevant proceedings, provides no basis for complainant's allegations of judicial misconduct.

Complainant's First Case

According to the record, complainant filed pro se the first case against multiple judicial officers who presided over complainant's state court proceedings and against an expert witness in the matters. At complainant's request, the judge ordered the voluntary dismissal of the claims against some defendants but allowed complainant's claim against the remaining defendant to proceed.¹ The remaining defendant filed a motion to dismiss, arguing that the claim was time-barred and that complainant failed to state a claim, to which complainant objected. The judge entered a lengthy opinion and order, granting defendant's motion to dismiss with prejudice, on the ground that the claim was time-barred.

¹ Subsequently, complainant retained counsel in the matter.

Complainant, through counsel, filed a motion for reconsideration arguing that, pursuant to state law, which was controlling in the matter, the action was not time-barred, and defendant objected. The judge entered a lengthy opinion and order, granting in part and denying in part complainant's motion, and amended the judgment to dismiss the case without prejudice, explaining that, while the claim may not be time-barred, complainant failed to plead sufficiently a claim. The court declined to dismiss the case on jurisdictional grounds, noting that the issue was unclear.

Defendant filed a motion for reconsideration, requesting that the claim be dismissed with prejudice, on the ground that the district court had previously determined that complainant failed to establish an essential element of the claim, and complainant filed an objection. The judge entered an order, amending the judgment to dismiss the claim with prejudice for the reason provided by defendant.

Complainant's Second Case

Complainant filed pro se the second case against the same judicial officers named in the first case, alleging that defendants were biased in presiding over complainant's matters. One defendant filed a motion to dismiss based on judicial immunity, to which complainant objected. Adopting defendant's reasoning, the judge granted defendant's motion to dismiss and dismissed the claims against that defendant with prejudice. Complainant filed a motion for reconsideration of the partial judgment and a motion to disqualify the judge, asserting, in part, that the judge protected the judicial officer defendants because the judge knew them. The remaining defendants filed a joint motion

to dismiss for failure to state a claim based on absolute judicial immunity and lack of subject matter jurisdiction, to which complainant objected. Subsequently, complainant filed a motion requesting that the court postpone decisions for several weeks, followed a month later by a motion to expedite the case and, thereafter, a second motion for the judge's recusal, reasserting the arguments made in his first recusal motion.

A number of months later, complainant filed a petition for a writ of mandamus, requesting that the Court of Appeals order the judge to rule on the pending recusal motions and motion for reconsideration of the partial judgment. Shortly thereafter, the judge denied the motions for recusal, explaining that there was no basis for recusal under 28 U.S.C. § 455, and the motion for reconsideration on the ground that the court did not find reason to depart from its previous rulings. The Court of Appeals denied the petition for a writ of mandamus as moot. The judge granted defendants' motion to dismiss in a multiple-page order, on the grounds of absolute judicial immunity and lack of subject matter jurisdiction, and dismissed the case with prejudice.

Neither complainant nor the record provides any evidence to support the allegations that the judge was biased or improperly motivated, or otherwise engaged in misconduct in presiding over complainant's cases. To the contrary, the record indicates that the judge considered the substance of complainant's pleadings and issued reasoned rulings in both cases, clearly providing the legal bases for the court's decisions, including several detailed, multipage opinions, some of which were in complainant's favor. See supra pp. 2-4.

Further, complainant's contention that the judge knows the judicial officer defendants, even if true, would not alone indicate bias or improper motive.² Accordingly, the 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).

As there is no evidence of bias or improper motive, complainant's objections to the substance and timing of the court's rulings, including the orders dismissing complainant's cases and denying complainant's motions for recusal, 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, 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."); see also id. Commentary on Rule 4 ("Rule 4(b)(1) . . . preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling.").

The same is true for complainant's allegations of delay. See id. Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a

² Although not necessary to the resolution of the matter, there is also no indication that the judge was obligated to recuse under either the Code of Conduct for U.S. Judges (Code of Conduct) or the federal disqualification statute, 28 U.S.C. § 455. See Code of Conduct, Canon 3(C)(1) (providing grounds for questioning judge's impartiality); see, e.g., United States v. Cooley, 1 F.3d 985, 996 (10th Cir. 1993) (explaining, along with a list of other factors, that a judge's "mere familiarity" of defendants does not provide a basis for a judge's recusal); and see also Rules of Judicial-Conduct, Commentary on Rule 4 (explaining that the Code of Conduct may inform consideration of a judicial misconduct complaint, but a violation of the Code of Conduct does not necessarily constitute judicial misconduct).

decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases."). Accordingly, the complaint is dismissed as not cognizable, 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. 01-21-90014 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), respectively.

November 23, 2022
Date



Chief Judge Barron