

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-22-90001

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BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: MARCH 27, 2023

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a), against a district judge in the First Circuit.<sup>1</sup> Complainant alleges judicial misconduct in connection with complainant's consolidated civil cases over which the judge presided. The misconduct complaint is frivolous and is not cognizable.

Describing his multiple state and federal court proceedings, complainant alleges that the judge's order dismissing complainant's civil cases was "arbitrary and bias[ed]." Complainant further alleges that the judge erred in dismissing the cases on the basis of judicial immunity, which complainant asserts is inapplicable.

The reviewed record, including the misconduct complaint and the dockets of the relevant proceedings, provides no basis for complainant's allegations of judicial

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<sup>1</sup> The present matter is complainant's second misconduct complaint. In 2018, complainant filed a complaint, against a district judge and a magistrate judge in the First Circuit, in connection with complainant's attorney disciplinary proceeding. Then Chief Judge Howard dismissed the complaint as not indicative of misconduct, as baseless, and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See Howard, C.C.J., Order, *In Re Complaint* Nos. 01-18-90032 and 01-19-90010 (July 12, 2019).

misconduct. According to the record, complainant filed two pro se civil cases against numerous state court judicial officers, government officials, and attorneys, in connection with his previous state court proceedings. After the court granted complainant's motion to consolidate the cases, the defendants filed motions to dismiss, arguing, inter alia, that complainant failed to state a claim upon which relief can be granted and that the judicial officer defendants had immunity. Over complainant's objections, the subject judge issued an order noting that the court had carefully reviewed the record and dismissing the cases on the grounds of judicial immunity as to the judicial officers and failure to state a plausible claim as to the non-judicial defendants.

Complainant fails to allege any facts and the record provides no evidence to support the conclusory allegation that the judge acted in an "arbitrary and bias[ed] way" in presiding over or dismissing complainant's cases. The record indicates that the judge reviewed the pleadings and clearly provided the legal bases for dismissal of the cases. Accordingly, the misconduct 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 bias or improper motive, complainant's objections to the judge's order of dismissal 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 . . . 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."). 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).

Because this is complainant's second baseless misconduct complaint, see supra note 1, complainant is warned that another frivolous or repetitive complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . .").

For the reasons stated, Complaint No. 01-22-90001 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), respectively.

March 27, 2023

Date

  
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Chief Judge Barron