

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-22-90004 and 01-22-90005

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: FEBRUARY 23, 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 and a magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with a civil case over which the district judge and magistrate judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant presents general and confused allegations that the judges displayed "judicial preference to cover up prosecution [and] guilty unethical acts[.]" and harbored "unethical and unreasonable and malicious intent to [enter] a biased disposition [in her case]" that prompted complainant to request that the case be dismissed. Complainant asserts that the district judge had "ill inten[tions]" in determining that complainant had sought to dismiss her case. Complainant further contends that, despite complainant explaining that there was a medical emergency, the district judge "forced" complainant to continue to participate in a deposition and "threatened" that her case would be dismissed if she did not do so, thus "omitting [her] rights to request [a] medical evaluation in order to continue."

Complainant alleges that the magistrate judge threatened dismissal of the case while discovery was ongoing and attempted to prevent information from being presented in the case. Complainant asserts that, after a status conference call, the magistrate judge shortened the period for complainant to respond to interrogatories, without providing notice to complainant. Complainant requests "directions" to the court to "[r]emove" complainant's "request for dismissal and continue to trial[.]" as the case was dismissed "under [f]alse pretenses." Complainant requests the "removal of" the judges "based on the outcome of [the misconduct] complaint."

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case, including the removal of a judge from a case or as complainant otherwise requests. 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).

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, through counsel, initiated an employment discrimination and retaliation action in the district court against her former employer.

Several years later, counsel for complainant moved to withdraw, citing a breakdown in the attorney-client relationship. After the court ordered counsel to file additional required information in support of the motion, counsel withdrew the request. Thereafter, counsel sought an extension of time to comply with discovery requests, which

the magistrate judge granted, but cautioned complainant that she had a duty to respond, noting that her history of non-compliance could put her at risk of dismissal.

After complainant was permitted a fourth extension of time to comply with discovery requests, her counsel again moved to withdraw. The magistrate judge allowed the motion, subject to counsel informing complainant of certain obligations related to her appearing pro se.

Thereafter, complainant pro se filed several motions for recusal of both judges, for additional time to complete discovery, and for the appointment of alternative counsel. The district judge granted complainant's request to reset the pretrial scheduling deadlines and denied the motions for recusal, explaining that there was no reasonable basis for questioning the judges' impartiality.

Following a status conference before the magistrate judge during which complainant clarified that she sought the removal of defendant's counsel, the magistrate judge denied the motion for alternative legal counsel, finding that there was no basis for such extraordinary relief.

Complainant then moved to stay the case, explaining that she intended to appeal an order of dismissal entered by an administrative agency, and requested a four-day extension to file her interrogatory responses. Finding that the motion may have merit, the magistrate judge ordered defendant to show cause why the case should not be stayed and granted the extension of time to file the interrogatory responses. While the original motion to stay remained pending, complainant filed a second motion to stay in which she

also requested a four-day extension of the deadline for producing other discovery, which the magistrate judge also granted.

Thereafter, the magistrate judge denied both motions to stay without prejudice, noting the possibility that additional facts could support the requested relief. Complainant filed a motion to clarify and to cancel or postpone an upcoming deposition, which the district judge construed as an objection to the magistrate judge's order and overruled, and denied all other relief requested, including a renewed motion for stay and for the magistrate judge's recusal. The district judge reiterated that further requests to extend discovery deadlines would not likely be granted and ordered complainant to participate at the scheduled deposition in good faith with a reminder that failure to do so could result in discovery sanctions.

About a week later, complainant filed a motion for voluntary dismissal, in response to which the district court issued an order to show cause why the motion should not be granted. Complainant subsequently requested to proceed with the case, and the district court deemed the motion to dismiss as moot and withdrawn. The district court case remains pending.

The misconduct complaint is baseless. There is no information in the complaint or reviewed record indicating that the judges harbored any "ill intent" or were otherwise improperly motivated in presiding over complainant's case. There is likewise no indication that either the district judge or the magistrate judge "threatened " complainant, or "forced" her to participate in the deposition or to move for dismissal of the proceeding.

To the contrary, the record indicates that the magistrate judge considered complainant's pleadings, granted complainant's numerous requests for extensions of time to comply with discovery requests, and issued orders based on the available record. See supra pp. 3-4.

The court's orders informing complainant of procedural consequences for failing to comply with required discovery do not evidence bias or other wrongdoing. Cf. Rules of Judicial-Conduct, Rule 4 (providing examples of cognizable misconduct). Nor is there any evidence that either judge prompted complainant to file a motion to dismiss her case, complainant's withdrawal of which the court promptly allowed. See supra p. 4. Finally, despite complainant's assertion to the contrary, the record demonstrates that the court entered clear orders concerning the scope of each discovery extension, following the status conference. See supra pp. 3-4. 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).

Insofar as complainant objects to the substance of the court's rulings, including, but not limited to, the denial of the motions for recusal, discovery extensions, and for a stay of proceedings, the complaint is dismissed as not cognizable pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also id. 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.").

For the reasons stated, Complaint Nos. 01-22-90004 and 01-22-90005 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D).

February 23, 2023

Date

  
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Chief Judge Barron