

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90008

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JANUARY 25, 2023

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 civil case over which the judge presided. The misconduct complaint is frivolous, is not indicative of misconduct, and is not cognizable.

Complainant alleges that the judge was not impartial, engaged in "demeaning and basically illegal" behavior, and did not act in "good faith" in presiding over and dismissing complainant's case, in which complainant alleged that complainant's former employer, a government agency, retaliated against complainant. Complainant suggests that the judge engaged in improper ex parte communication with complainant's former employer, as evidenced by the court's citing to the same authorities in the order dismissing complainant's case as complainant's employer had cited in a brief submitted in

an unrelated matter. Complainant states that complainant "need[s] to know if [the judge] is going to receive any compensation."¹

The reviewed record, including the misconduct complaint and attachments, and the docket of the underlying proceeding, does not support complainant's conclusory allegations of judicial wrongdoing. According to the record, complainant filed a civil case against a number of government entities and officials, alleging, inter alia, that complainant's former employer and defendants retaliated against complainant and interfered with complainant's unemployment benefits. On the same day, complainant filed a motion for leave to proceed in forma pauperis (IFP) and as a pro se electronic filer. The following day, the judge issued an order dismissing the complaint, on the grounds that it failed to state a claim on which relief may be granted, and citing to applicable caselaw. Accordingly, the judge denied complainant's motions to proceed IFP and as a pro se electronic filer.

Neither complainant nor the record provides any facts indicating that the judge did not act in "good faith," was biased, or engaged in "illegal" or any other improper behavior in presiding over complainant's case. To the contrary, the record demonstrates that the

¹ Complainant includes numerous allegations against court staff (including, but not limited to, tampering with complainant's filings, failing to mail documents to complainant, and listing defendants incorrectly on the docket), and attaches copies of emails with court staff that complainant purports support complainant's allegations. Neither the record of the proceeding nor these emails support complainant's allegations. In fact, the emails indicate that court staff provided complainant with information on how to open complainant's case, complete motions to proceed in forma pauperis, and apply for an ECF account. Moreover, the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge or otherwise appropriate for resolution by means of the judicial misconduct process. See, e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7; see also 28 U.S.C. § 351, et seq.; and see generally Rules for Judicial-Conduct and Judicial-Disability Proceedings.

judge provided clear reasoning for the court's ruling dismissing complainant's civil matter. Any suggestion that the judge was somehow compensated specifically in connection with complainant's case is presented with no basis in fact. Further, the judge's citations in the order of dismissal to caselaw that complainant's former employer cited in an unrelated matter in no way are indicative of improper ex parte communication or other judicial wrongdoing. Accordingly, the complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C) and (A), respectively.

Where, as here, there is no evidence of judicial impropriety, complainant's objections to the judge's order dismissing complainant's civil complaint 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 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. 01-22-90008 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(C), respectively.

January 25, 2023

Date



Chief Judge Barron