

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90011

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: APRIL 3, 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 two civil matters over which the district judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant makes general allegations that the district judge delayed his cases "for no valid reason" and "refuse[d] to accept the facts [of] the case," in violation of complainant's right to a speedy trial and equal protection under the state and federal constitutions. Complainant asserts that the judge treated him in a "demonstrably egregious and hostile manner." Complainant maintains that the district judge neglected to recognize complainant's pro se status and that complainant "never had a frivolous or abusive intent," as evidenced by complainant's sworn affidavits and credible submissions.

The reviewed record, including the misconduct complaint, relevant attachments, and dockets of the proceedings, provides no evidence in support of complainant's claims

that the judge engaged in any wrongdoing. The record indicates that complainant first initiated a civil action in the district court against the state and state agencies (collectively state defendants), and filed a "demand for summary judgment" and an affidavit alleging involuntary servitude. Noting that complainant had previously filed multiple lawsuits against the state defendants in which he had prematurely moved for summary judgment (and which had been subsequently voluntarily dismissed without prejudice), the district judge ordered complainant to file a brief with the district court demonstrating good cause as to why the latest complaint should not be dismissed with prejudice based on complainant's repeated filing of frivolous claims. Complainant filed a response to the district court's order, followed by a request for a decision and a demand for decision.

Complainant simultaneously initiated a civil rights action in the same district court against several police officers of separate departments (collectively police department defendants), and filed a motion for summary judgment. Similar to the order entered in complainant's other pending case, the district judge entered an order noting that complainant had filed and voluntarily dismissed several prior complaints against the police department defendants and ordered complainant to file a brief establishing why the instant complaint should not be dismissed, with prejudice, for good cause. Complainant filed a response to the district court's order, followed by a request for a decision and a demand for decision.

In a multiple-page memorandum of decision and order entered in both cases, the judge described the events precipitating the two cases and explained that the current

allegations mirror claims that complainant had previously brought against these individuals in multiple cases that were later voluntarily dismissed. After finding that the instant actions were filed based on either a misunderstanding or refusal to recognize the applicable law, the district judge determined that complainant did not have any valid legal claims against defendants, denied complainant's demands for summary judgment, and entered summary judgment for defendants in both cases. In a footnote, the judge acknowledged that the court had included additional explanation in the order out of concern about the potential ramifications of complainant's misunderstandings of the law, and advised him to seek counsel regarding the applicable law.

The misconduct complaint is without merit. There is no evidence in support of complainant's conclusory allegations that the judge "refuse[d]" to accept the facts of the case, violated complainant's constitutional rights, treated complainant improperly, or engaged in any other wrongdoing. Rather, the record indicates that the district judge considered complainant's pleadings, allowed complainant an opportunity to file a brief in each case explaining why the complaint should not be dismissed for good cause, and issued a reasoned, multiple-page memorandum and order clearly explaining the bases for the court's rulings. See supra pp. 2-3. In doing so, the judge explicitly sought to clarify complainant's misunderstandings of the law and advised him to consult counsel. See supra p. 3. Therefore, the complaint is dismissed as baseless, 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)(D).

Where, as here, there is no evidence of improper judicial motivation, complainant's objections to the judge's rulings, including the orders to show cause and entering summary judgment on behalf of defendants, are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also 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.") and 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."). The same is true for complainant's allegation that the district judge improperly delayed complainant's cases. See id. Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a 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. 01-22-90011 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).

April 3, 2023

Date



Chief Judge Barron