

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-22-90014, 01-22-90015, 01-22-90016, and 01-22-90017

BEFORE
Gelpí, Circuit Judge

ORDER

ENTERED: MAY 24, 2023

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge and three appellate judges in the First Circuit. Complainant alleges judicial misconduct in connection with a civil matter over which the judges presided in the district and appellate courts, respectively. The misconduct complaint is frivolous and is not cognizable.

Complainant alleges that the district judge's mental capacity is "in decline" based upon an order of dismissal in which the judge allegedly used an incorrect case caption that failed to include one defendant and included a non-party to the case. Complainant further asserts that the circuit judges' dismissal of his appeal as premature is "patently false" and provided without explanation.

There is no support, either in the complaint or in the reviewed record, for complainant's conclusory claims of misconduct and disability. The record indicates that complainant pro se filed a civil action against numerous defendants, alleging that

defendants violated his rights. Over the next few months, several of the defendants filed motions to dismiss to which complainant objected, and complainant filed a number of motions for entry of default, which the magistrate judge denied, along with complainant's various motions for discovery and other relief. A magistrate judge (who is not a subject of the misconduct complaint) also recommended that the complaint be dismissed as to one defendant for failure to accomplish proper service.

After complainant filed an amended complaint apparently intended to cure the service deficiency, a number of the defendants again filed motions to dismiss to which complainant objected, and complainant filed motions for entry of default, including one for default on all defendants, which one defendant opposed. The subject district judge dismissed the claims against the defendant who had opposed complainant's motion for entry of default, and subsequently, over complainant's objection, adopted the magistrate judge's multiple-page report and recommendation recommending that the pending motions to dismiss be allowed and that complainant's requests for default be denied. Later that month, several more defendants filed a motion to dismiss to which complainant objected, and the judge dismissed the claims against those defendants.

Complainant appealed the order adopting the report and recommendation. The Court of Appeals dismissed the appeal for lack of jurisdiction, concluding that it was filed prematurely. Complainant filed a petition for rehearing and rehearing en banc, as well as a motion to recuse the panel of judges and a motion for leave to file a reply brief, all of which the Court of Appeals denied.

Thereafter, the district judge entered an order dismissing the district court action without prejudice for complainant's failure to file a return of service for the remaining defendants and/or to show good cause why service had not been made.

The complaint is frivolous. Complainant's claim that the district judge's mental capacity is "in decline" is presented without any basis in fact. An incorrect case caption on a judge's order would not be remotely indicative of judicial disability or misconduct.¹ See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4(c). As the complaint is devoid of any facts suggesting judicial disability or wrongdoing and amounts to nothing more than an objection to the district judge's order accepting the magistrate judge's lengthy recommended ruling, it is dismissed as frivolous and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(C), 11(c)(1)(B), and 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.").

Complainant's assertion that the appellate judgment dismissing his appeal is "patently false" does not allege or evidence conduct that would amount to misconduct and is on its face an objection to the substance of the court's determination. Accordingly,

¹ Although not necessary to the disposition of this matter, the order at issue included a correct case caption based upon the defendants that remained at that time.

it is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 4(b)(1), 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.").

For the reasons stated, Complaint Nos. 01-22-90014, 01-22-90015, 01-22-90016, and 01-22-90017 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 (C).

5/24/2023

Date

A handwritten signature in blue ink, appearing to read "John A. Gelpí", written over a horizontal line.

Judge Gelpí