

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90031

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JULY 31, 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 a civil matter in which complainant was a defendant and counter-plaintiff and over which the district judge presided. The misconduct complaint is baseless and is not cognizable.

Citing to several statutes, complainant seems to allege that, in presiding over complainant's case, the judge engaged in federal crimes and deprived complainant of his rights. Complainant asserts that the judge tampered with evidence during the bench trial in the case by preventing plaintiff's counsel from completing the direct examination of complainant. Complainant also contends that the judge "allowed" plaintiff's counsel to

"perjure himself" when counsel stated that complainant had not responded to plaintiff's demand to terminate a notice of a lien, despite evidence to the contrary.¹

Complainant further seems to allege that the judge was obligated to disqualify from the case pursuant to 28 U.S.C. § 455(b)(5)(i) which requires recusal where a judge is a "trustee of a party" because complainant had named the judge as a trustee of complainant's estate. Complainant asserts that the judge postponed the second day of trial by several weeks to permit a guest judge to attend. Finally, complainant seems to object to the judge's denial of a motion he filed requesting that plaintiff's counsel provide legal authority to act as counsel for plaintiff.

The reviewed record, including the misconduct complaint, the docket of the proceeding, and the relevant transcripts, provides no basis for complainant's allegations of judicial misconduct. According to the record, plaintiff filed a civil action against complainant, alleging fraud and several other claims in connection with a financial transaction. Complainant filed an answer, denying all claims, a counterclaim requesting damages, and a number of documents that purported to appoint as trustees to his estate and trust all federal judges, among many other groups of people. In response to the counterclaim, plaintiff filed an answer with multiple affirmative defenses.

¹ Complainant seems to include misconduct allegations against plaintiff's attorney. However, the governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against federal judges only. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h). Therefore, these allegations are not addressed.

The judge presided over a bench trial, during the first day of which plaintiff called a number of witnesses, including several of plaintiff's employees and complainant. At numerous times throughout the proceeding, the judge explained the various elements of the bench trial, including opening statements, admittance and consideration of evidence, complainant's Fifth Amendment privilege and ability to testify on his own behalf or call other witnesses; sustained multiple objections made by complainant; and, when overruling complainant's objections, provided clear reasoning. Additionally, during complainant's cross-examination of a witness, the judge clarified the questions that complainant asked and confirmed the intended meaning with complainant. During plaintiff's counsel's direct examination of complainant, counsel entered into evidence, without objection, counsel's demand to terminate a notice of a lien and complainant's response to that demand, and asked complainant questions pertaining to both documents. At the end of the first day of the bench trial, the judge noted the date for the next day of the trial.

At the beginning of the second day of the bench trial, which the judge had rescheduled by several weeks, the judge introduced a guest judge from a foreign court who was observing the trial and commented that counsel for plaintiff was essentially done with questioning complainant and was prepared to rest. Plaintiff's counsel explained that there were additional documents to introduce into evidence and that additional time was necessary to complete the direct examination of complainant. After the documents were entered into evidence without objection, plaintiff rested. Following closing

arguments, the court ruled in plaintiff's favor, dismissed the counterclaims as baseless, and found that plaintiff's counsel was entitled to recover reasonable attorney's fees.

Months after the bench trial concluded, complainant filed a motion requesting that plaintiff's counsel provide the legal authority to act as counsel for plaintiff, which the judge denied.

The misconduct complaint is without merit. The complaint and record contain no information indicating that the judge committed any crimes, deprived complainant of his rights, tampered with evidence (by preventing plaintiff's counsel from completing the direct examination of complainant or otherwise), "allowed" plaintiff's counsel to "perjure himself," or was otherwise improperly motivated in handling the case.² To the contrary, the record shows that the judge provided detailed, clear explanations of the trial process and reasons for the court's rulings throughout the trial and explicitly confirmed that complainant understood the process. 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).

While the recusal statute, 28 U.S.C. § 455(b)(5)(i), and the Code of Conduct for United States Judges, Canon 3(C)(1)(d)(i), require a judge to recuse where the judge is a "trustee of a party," any failure to recuse does not amount to misconduct where, as here,

² Although not necessary to the disposition of the matter, there is nothing in the record to suggest that plaintiff's counsel committed perjury. See supra p. 3.

there is no evidence of improper judicial motive. 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, including a failure to recuse. 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 on 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.").³ The same holds true for complainant's other challenges to the court's rulings, including, but not limited to, the denial of complainant's motion requesting that plaintiff's counsel provide legal authority and the claim that the judge improperly delayed the second day of the bench trial. 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,

³ Moreover, the document that complainant filed in his case indicating that "all . . . federal judges" and numerous other unnamed entities are trustees to his estate would not alone be sufficient to demonstrate that the subject judge serves in this capacity or was otherwise obligated to recuse. See Code of Conduct for United States Judges (Code of Conduct), Canon 4(E) (prohibiting a judge from serving as a personal trustee, except for a family member). Furthermore, a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); Rules of Judicial-Conduct, Commentary on Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules . . ."). Likewise, "a violation of the disqualification statute, 28 U.S.C. § 455, [would] not automatically [be] a violation of the Judicial Misconduct statute[; however,] conceivably[,] a sufficiently egregious violation, especially if coupled with evidence of bad faith, might . . . rise to the level of judicial misconduct." See Boudin, C.C.J., Order, In Re: Complaint No. 362 (Dec. 16, 2003) (citation omitted).

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. 01-22-90031 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), respectively.

July 31, 2023
Date



Chief Judge Barron