

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-23-90002

BEFORE  
Barron, Chief Circuit Judge

---

ORDER

ENTERED: OCTOBER 3, 2023

---

Complainant, a criminal defendant and 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 his criminal proceeding and subsequent habeas proceeding over which the district judge presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.<sup>1</sup>

Complainant alleges that the judge was prejudiced against him while presiding over his criminal case and subsequent habeas proceeding. Complainant asserts that the judge denied all of complainant's motions, many without providing any justification or holding hearings, and granted all of the government's motions, many before the time had expired for complainant to respond. Complainant further asserts that the judge excluded

---

<sup>1</sup> This is complainant's second misconduct complaint. In complainant's first misconduct complaint, he alleged that a chief district judge in the First Circuit engaged in misconduct in connection with a visit that the judge made to the prison where complainant was incarcerated and its purported impact on complainant's criminal proceeding underlying the present matter. See Judicial Misconduct Complaint No. 01-23-90001. The misconduct complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(B) and 352(b)(1)(A)(i). See Barron, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-23-90001 (May 4, 2023).

him from a hearing on his retained counsel's motion to withdraw, of which he had no notice, and that the judge's subsequent denials of his motions for counsel deprived complainant of the ability to prepare his related civil case. Complainant alleges that the district judge "minimiz[ed complainant's] voice and opportunity to be heard" when ruling that the government did not need to reply to complainant's motions unless ordered to do so, falsely stated in an order that complainant had misstated the record in an attempt to portray him in an "unappealing light," and delayed his case.

Complainant further alleges that, in denying a motion that he filed concerning the chief district judge's purported statement that the district court would "look favorably" upon detainees who received the Covid-19 vaccine, see infra p. 4, the judge "substituted . . . opinion as fact." Complainant also asserts that the judge failed to report the chief district judge's improper communication to the Chief Circuit Judge.

Complainant objects to the sentence imposed by the court and alleges that the judge was "openly hostile" toward complainant during his sentencing hearing when the judge asked him questions that were "prosecutorial in nature." Complainant adds that the judge failed to consider complainant's vaccination status at sentencing, contrary to the chief district judge's representations. Finally, complainant asserts that the court consistently failed to provide him notice of its rulings.<sup>2</sup>

---

<sup>2</sup> Complainant also includes allegations against multiple attorneys involved in his case. As the governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against current federal judges only, these allegations are not addressed. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h).

## History of the Proceedings

The reviewed record, including the misconduct complaint and attachments, the docket of the proceedings, and the transcript of complainant's sentencing hearing, provides no basis for complainant's allegations of judicial misconduct. Complainant was indicted on fraud and other charges. Several months later, complainant's retained counsel filed a motion to withdraw, explaining that complainant was notified of this request and of his right to object, pursuant to the applicable local rule. At a hearing with the government and complainant's counsel, the judge granted the motion to withdraw, and, subsequently, the court appointed counsel to represent complainant. Thereafter, complainant pled guilty to two counts, pursuant to a plea agreement, and requested to be sentenced in person.

At his sentencing hearing, complainant exercised his right to allocution, complainant's attorney represented that complainant had been vaccinated against Covid-19, and the judge asked complainant a number of clarifying questions regarding information that was presented by complainant and his attorney.<sup>3</sup> After complainant answered the questions, the court sentenced complainant to several years of imprisonment and supervised release.<sup>4</sup>

---

<sup>3</sup> After complainant's counsel consented to the judge's request to ask complainant clarifying questions, the judge asked complainant to explain his admission of guilt to prior offenses, details about his employment history, the role that his mental health played in committing the offense, his relationship with a purported co-conspirator, and details of the fraudulent activity. Thereafter, the judge asked complainant's counsel if he had anything to add based on the questions.

<sup>4</sup> Complainant appealed his sentence, asserting ineffective assistance of counsel, and the Court of Appeals dismissed the appeal, without prejudice to the right of complainant to prosecute his ineffective assistance of counsel claims in a collateral proceeding under 28 U.S.C. § 2255.

Following an unsuccessful appeal, see supra note 4, the district judge denied complainant's requests for appointment of counsel, explaining that he had no automatic right to counsel in post-conviction proceedings and that appointment was not warranted in this case. Complainant filed pro se a number of motions, including a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, based primarily on claims of ineffective assistance of counsel, and a motion alleging that the chief district judge promised complainant "favorable treatment" in his criminal proceeding, if he received the Covid-19 vaccine, during the judge's visit to the prison where complainant was detained, and that complainant relied on this "commitment" in accepting a plea agreement. The judge denied the latter motion, explaining that it does not include a request for relief, but simply describes a factual issue for resolution in the habeas proceeding.

The government filed a motion requesting an order: (1) finding a waiver of attorney-client privilege due to complainant's allegations concerning ineffective assistance of counsel; and (2) continuing the deadline for the government's response to the § 2255 motion. The judge granted the extension motion, prior to the deadline for complainant to respond, and ordered complainant to respond to the government's motion for an order finding a waiver of attorney-client privilege. Complainant filed an opposition to the extension request and a motion to vacate the order granting the extension, explaining that the court's decision was made prior to receipt of complainant's timely response, as well as an objection to the government's motion regarding the waiver, and

the judge entered a multiple-page order granting a limited waiver of attorney-client privilege.

Complainant filed a number of motions, including a motion for the district judge's recusal, in which he asserted that the judge granted the government's motion regarding the waiver of attorney-client privilege before receiving complainant's objection, and a motion in which he asserted that, for the past few months, he had not received notices regarding the case, and requested that all orders issued during this time be vacated and that the court provide him with regular case updates. The judge denied both motions and stated that the recusal motion did not accurately reflect the record, as the court did not rule on the motion for waiver of attorney-client privilege until after complainant had responded. As complainant had filed a number of duplicate submissions, the judge ordered complainant not to submit any additional duplicate filings and directed the government that it need not reply to complainant's motions unless ordered to do so by the court.<sup>5</sup>

### Discussion

The misconduct complaint is meritless. The complaint and record fail to support complainant's allegations that that the judge was prejudiced, "minimiz[ed]" complainant's opportunity to be heard, "deprived" him of the ability to prepare his habeas proceeding, made false statements in an attempt to mischaracterize complainant, or was otherwise

---

<sup>5</sup> The judge subsequently recused from complainant's case, and, thereafter, the court denied complainant's 28 U.S.C. § 2255 motion.

improperly motivated in presiding over complainant's case. The record indicates that the judge considered the substance of complainant's pleadings and issued reasoned decisions, based on the record, that included detailed explanations for their conclusions. See supra pp. 3-5. Nor does the judge's questioning of complainant during his sentencing hearing demonstrate judicial "hostility." The record demonstrates that the judge asked complainant questions at the sentencing hearing, with his counsel's consent, in an effort to clarify information provided by complainant and complainant's counsel that was relevant to the sentencing. See supra p. 3 and note 3.

Likewise, there are no facts in the record suggesting that the judge excluded complainant from the hearing on his counsel's withdrawal. The record indicates that complainant's counsel certified to the court that he informed complainant of the motion to withdraw, in accordance with the applicable local rule, and counsel for both parties appeared at the hearing. 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 bias or improper judicial motivation, complainant's objections to the timing or substance of the district judge's rulings, including, but not limited to, the orders denying complainant's motions for counsel and for the judge's recusal, regarding the chief district judge's purported statement, and informing the government that it did not need to respond to complainant's motions, as well as complainant's sentence, 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, 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 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 case. See Rules of Judicial-Conduct, 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).

Further, complainant's motion regarding the chief district judge's purported statement concerning detainees who received the Covid-19 vaccine did not contain "reliable information reasonably likely to constitute judicial misconduct or disability" that the district judge would have been obligated to report. See id. Rule 4(a)(6) ("Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability."). See also Barron, C.C.J., Order, In Re: Judicial Misconduct

Complaint No. 01-23-90001 (May 4, 2023) (dismissing a misconduct complaint against the chief district judge, alleging that the chief judge engaged in misconduct in connection with the same events outlined in the motion, as baseless and not indicative of misconduct, pursuant to 28 U.S.C. §§ 352(b)(1)(B) and 352(b)(1)(A)(i)); and supra note 1.

Finally, while there is nothing in the record to suggest that the court did not provide complainant with notice of its orders, the conduct of court staff in exercising their administrative duties would not be attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7 (also explaining that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff (citing 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct)). Accordingly, the complaint is dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-23-90002 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), (B), and (D).

October 3, 2023  
Date

  
\_\_\_\_\_  
Chief Judge Barron