

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-23-90003 and 01-23-90004

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 26, 2023

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge and an appellate judge in the First Circuit.¹ Complainant alleges that the district judge engaged in judicial misconduct in presiding over two of complainant's civil cases and that the appellate judge engaged in misconduct in dismissing complainant's first misconduct complaint.² The misconduct complaint is baseless and is not cognizable.

¹ Although complainant appears to include allegations against two other federal judges in the brief statement of facts in support of his complaint, he does not identify them as subjects of the complaint, as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct). See Rules of Judicial-Conduct, Rules 1, 3(h), and 6. Accordingly, any allegations against those judges are not addressed.

² This is complainant's third misconduct complaint. In complainant's first complaint, he alleged misconduct against two judges, one of whom is the subject district judge of the instant misconduct complaint, in connection with complainant's first civil case underlying the present matter. See infra pp. 4-5. The subject appellate judge dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the First Circuit Judicial Council affirmed the order of dismissal. Complainant also filed a misconduct complaint against three appellate judges of the First Circuit and a district judge, sitting by designation in the First Circuit, in connection with cases over which they presided. The subject appellate judge dismissed the complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii), and the First Circuit Judicial Council affirmed the order of dismissal.

I. Complaint

Complainant alleges that the district judge incorrectly determined that defendants in his second case had not been served, although the docket indicated that summonses had been issued. Complainant further objects to the judge's characterization of complainant's motion, in which he indicated that he opposed the judge's assignment to the case, as "unintelligible," asserting that the basis for his opposition was clearly provided in filings that were incorporated into the motion by reference. Complainant includes in the misconduct complaint purported excerpts from these filings, in which he asserts that, in his first case, the judge engaged in improper ex parte communication with defendant's attorney when excluding complainant from a scheduling conference over which the judge presided. Complainant further asserts that, by meeting with defendant's counsel without complainant, the judge acted "in direct conflict" with the law, indicated a "preference" toward defendant, and "opened the possibility" that counsel for defendant could have bribed the judge, and that, therefore, complainant opposes the judge's assignment to his second case. Further, complainant seems to object to the court's failure to assign two judges to handle the second case, as he requested in multiple pleadings.

With respect to the appellate judge, complainant alleges that, in dismissing his previous misconduct complaint against two judges, one of whom is the subject district

judge of the present matter, the appellate judge "den[ied] all facts" and showed a "preference for . . . fellow colle[a]gues." See supra note 2.³

The reviewed record, including the misconduct complaint and attachments, and dockets of the relevant proceedings, provides no basis for complainant's allegations of judicial misconduct.

II. History of the Proceedings

A. Complainant's First Case

More than five years ago, complainant filed pro se a civil case against his bank. The court appointed pro bono counsel in the interest of justice and judicial economy, stayed the case for a period of time, and ordered complainant to attend the initial scheduling conference. The subject district judge called but did not hold the initial scheduling conference because complainant's counsel was not present and the case had been stayed. The same day, complainant filed a motion requesting that the initial scheduling conference be held before expiration of the stay, which the judge denied. Subsequently, the subject district judge recused, and another district judge granted defendant's motion for summary judgment and dismissed the case with prejudice.

B. Complainant's Second Case

Years later, complainant filed pro se a case against another financial institution and its employees, and requested that two judges be assigned to decide the case.

³ Although complainant identifies two of his appeals on the complaint form naming the appellate judge, complainant's supporting information includes no allegations or information concerning the appeals or the appellate judge's involvement in them.

Summonses as to defendants were issued electronically the following month. Thereafter, the case was transferred to the subject district judge from another district judge.

Complainant filed a pleading in which he requested that the employee defendants appear in court and that a final opinion in the case be issued by two judges, and stated, in part, that he needed his credit report to be issued promptly and that the financial institution defendant had engaged in an abusive practice. Complainant stated in an exhibit to the pleading that he opposed the subject district judge's appointment to the case and referred to several other of his filings. The next day, the judge entered orders denying complainant's pleading as unintelligible, noting that defendants had not yet been served with the complaint, and granting complainant an extension of time to serve process upon defendants.⁴

C. Complainant's First Misconduct Complaint

In complainant's first misconduct complaint, he alleged, in part, that two judges, one of whom is the subject district judge of the present matter, were biased against him and engaged in improper ex parte communication with defendant's attorney when they excluded him from the scheduling conference in his first case. See supra p. 3 and note 2. In an order dismissing the complaint, the subject appellate judge recounted complainant's allegations and the procedural history in complainant's first case; explained that the docket in the case indicated that the scheduling conference at which complainant alleged

⁴ Subsequently, the case was transferred to another judge, and the executed summonses were returned for defendants. The case is pending.

improper ex parte communication occurred was not held; and determined that the complaint was baseless and was not cognizable. The First Circuit Judicial Council affirmed the order of dismissal.

III. Analysis

The misconduct complaint is meritless. Neither the complaint nor the record of the proceedings provides any facts suggesting that the district judge violated the law by engaging in improper ex parte communication in complainant's first case. As determined in the order disposing of complainant's previous misconduct complaint, the conference at which complainant alleges the improper ex parte communication occurred was not held because complainant's counsel was absent and the case had been stayed. See supra pp. 3 and 4-5. Nor is there any support for complainant's allegations that the judge acted with preferential treatment toward defendants, accepted bribes, or had any other improper motive in presiding over either of complainant's cases. The judge's role in complainant's first case was limited to cancelling the initial scheduling conference and denying complainant's motion requesting that the initial scheduling conference be held before expiration of the stay. See supra p. 3 Further, the record indicates that, in complainant's second case, the district judge provided complainant additional time to effectuate service and considered complainant's pleading expressing opposition to the judge's appointment to the case. See supra p. 4.

Likewise, the record does not support complainant's conclusory allegation that the appellate judge had a "preference" for the judges named in complainant's first misconduct

complaint or harbored any other illicit motivation in dismissing the complaint. The record indicates that the appellate judge thoroughly reviewed both the misconduct complaint and the underlying record, and determined that the misconduct complaint was baseless and was not cognizable. See supra pp. 4-5 and note 2. 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).

As there is no evidence of improper judicial motive or other wrongdoing as to either of the subject judges, complainant's allegations amount to nothing more than challenges to the courts' rulings — including the district judge's orders indicating that service had not been completed, denying complainant's request for two judges to preside over his case and opposing appointment of the judge to the case, and canceling the status conference, as well as the appellate judge's order dismissing complainant's prior misconduct complaint — and therefore, 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, including a failure to recuse. If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."); 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."); and Commentary on Rule 4 ("[A] complaint challenging the correctness of a chief judge's

determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint."). 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 Nos. 01-23-90003 and 01-23-90004 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).

As this is complainant's third baseless judicial misconduct complaint, complainant is warned that the filing of another baseless or repetitive complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . .").

October 26, 2023
Date



Chief Judge Barron