

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90005

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 in the First Circuit. Complainant alleges judicial misconduct in connection with his habeas corpus proceeding over which the judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge acted with bias and prejudice when dismissing complainant's petition for habeas relief in a brief, "rote, [and] formulaic" order, which complainant asserts lacked "any thought, facts, or reasoning." Complainant objects to the judge's representation in the order of dismissal that the judge conducted a "'de novo'" review of complainant's pleadings, which included a several-hundred-page objection to the magistrate judge's report and recommendation that complainant filed the day before the judge entered the order of dismissal. Complainant asserts that it would be a "metaphysical impossibility" for the judge to review the lengthy pleading in this short time.

The reviewed record, including the misconduct complaint and the docket of the proceeding, provides no support for complainant's allegations of judicial misconduct. According to the record, complainant filed a petition for writ of habeas corpus that was referred to a magistrate judge. The magistrate judge issued a report and recommended decision, explaining that, as complainant had unsuccessfully requested such relief in another jurisdiction, the petition for habeas relief is a second and successive request and that complainant did not provide any evidence that the second or successive request for habeas relief had been authorized by a federal circuit court, as required to provide the district court with jurisdiction over the instant petition. Accordingly, the magistrate judge recommended that the court dismiss the petition for habeas relief for lack of jurisdiction and deny a certificate of appealability because there is no substantial showing of a denial of a constitutional right.

The same day that the report and recommended decision was issued, complainant filed an objection, with attachments, totaling several hundreds of pages, in which he argued the merits of his underlying proceedings and asserted that his pending habeas request was not a second or successive petition. The following day, the subject judge entered an order affirming the magistrate judge's recommended decision, dismissing the habeas petition, denying a certificate of appealability, and noting that the court reviewed and considered the extensive record of the proceeding, including complainant's lengthy objection to the report and recommended decision, and that the judge made a de novo determination of the issues adjudicated by the magistrate judge.

The complaint is meritless. The record provides no evidence to support complainant's allegation that the judge was biased or engaged in any wrongdoing in presiding over complainant's case. The record indicates that the judge reviewed the report and recommended decision and the record of the proceeding, including complainant's objection to the report and recommended decision, and made a de novo determination that the habeas petition should be dismissed and that no certificate of appealability should be issued. See supra p. 2. The judge's issuance of the order of dismissal shortly after complainant filed his objection to the report and recommended decision does not evidence bias or other improper motive. 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 bias or improper judicial motive, complainant's objections to the court's order dismissing the habeas petition and denying the certificate of appealability 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 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."); 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."). Accordingly, the complaint is dismissed 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. 01-23-90005 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.

October 26, 2023

Date



Chief Judge Barron