

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90006

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 civil case over which the judge presided. The misconduct complaint is not cognizable.

Complainant alleges that, in presiding over complainant's case, the judge "refused" to grant complainant electronic filing "privileges," even though complainant provided evidence demonstrating that the clerk's office "sabotaged" his case by failing to upload on the docket the entirety of his motion to file an amended complaint. Complainant requests permission to file documents electronically in his case.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining a ruling in a case, including an order allowing electronic filing, as requested by complainant. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b).

The misconduct complaint is not cognizable. The reviewed record, including the misconduct complaint and docket of the relevant proceeding, indicates that complainant initiated pro se a civil action against several government entities, private companies, and an individual, alleging, in part, violations of his privacy and requesting compensation, and filed motions for leave to proceed in forma pauperis and for appointment of counsel. In a multiple-page memorandum and order, the district judge examined the sufficiency of the pleadings indicating that the court was construing the complaint generously, explained why the complaint failed to comply with basic pleading requirements, granted complainant's motion to proceed in forma pauperis, denied complainant's motions to appoint counsel without prejudice because the complaint failed to state a claim upon which relief could be granted, and provided complainant time to file an amended complaint to cure the noted deficiencies.

A month later, complainant filed a timely amended complaint, as well as a motion requesting permission to do so. Weeks later, complainant filed another timely amended complaint and motion to file the amended complaint, asking to include another government entity and the district court clerk's office as defendants, asserting that the clerk's office failed to include on the docket the entirety of an unidentified document he had mailed. The judge, in a multiple-page order, denied complainant's motions to amend without prejudice, directed complainant to file one document entitled "second amended complaint" in compliance with the federal rules, ordered complainant to make no further amendments or supplements to the second amended complaint without prior permission

and good cause shown, and noted that complainant failed to identify the document he asserted was not entered on the docket correctly.

The following day, complainant filed a second amended complaint, in which he requested permission to file electronically as the clerk's office did not upload to the docket the entirety of his first motion to amend the complaint. In a multiple-page order, the judge detailed the deficiencies that remained in the second amended complaint, did not address complainant's request to file electronically, and dismissed the action on the ground that the complaint failed to state a claim upon which relief could be granted. Months later, the court docketed correspondence from the clerk of court, in response to multiple emails from complainant in which he stated that certain documents submitted to the court were not entered on the docket correctly, explaining that all documents received by the court were entered on the docket.

The misconduct complaint is without merit. Complainant provides and the record includes no information to support his allegation that the judge was improperly motivated in declining to grant complainant's request for permission to electronically file or in presiding over complainant's case. In fact, the record indicates that the judge reviewed complainant's filings, provided complainant multiple opportunities to cure defects in his filings, and issued a reasoned ruling dismissing the appeal. See supra pp. 2-3.¹

¹ In support of complainant's assertion that clerk's office staff "sabotaged" his case by failing to docket certain pages of his filings, complainant attaches copies of postal receipts that include the weight of various pleadings he sent to the courthouse with notations by complainant purportedly identifying each corresponding docket entry and page count. Although not necessary to the disposition of this matter, neither the docket nor the receipts provided by complainant establish that court staff omitted from the docket portions of complainant's filings. Moreover, the conduct of court staff in exercising their administrative duties is not attributable to the judge. See Lynch, C.C.J.,

Where, as here, there is no claim or evidence of improper judicial motive or other judicial wrongdoing, complainant's conclusory allegation amounts to nothing more than his disagreement with the court's order dismissing complainant's case without ruling on the request for permission to file electronically. As such, the complaint is 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 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."). 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 No. 01-23-90006 is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

October 26, 2023
Date



Chief Judge Barron

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 for Judicial-Conduct and Judicial-Disability Proceedings)).