

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-08-90023, 01-08-90024, 01-08-90025,
01-08-90026, 01-08-90027, and 01-08-90028

BEFORE
Selya, Circuit Judge

ORDER

ENTERED: OCTOBER 16, 2008

On July 30, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a magistrate judge, two district judges, and three appellate judges in the First Circuit. The complainant alleges that the magistrate judge improperly delayed for six months before issuing a decision in the complainant's employment discrimination case. The complainant asserts that the magistrate judge's decision, when issued, neglected to reflect the "key evidence" before the court (as indicated by the definitions of two words--"nature" and "situation"--supposedly appearing in a transcript) and that the magistrate judge "[p]ossibly had discussions with other parties and council [sic] and [the] clerk of court"

The complainant then charges that the three appellate judges responsible for the complainant's appeal of the employment discrimination proceeding improperly delayed for eight months before issuing a ruling which, when issued, wrongfully denied the complainant's request to reopen the matter despite the fact that the complainant had voluntarily dismissed it and had provided

proof that he suffers from a mental illness.

The complainant next alleges that the first of the two named district judges, who presided over a civil rights case that the complainant filed against the identified magistrate judge, "possibly had discussions with appeals clerks." Lastly, the complainant contends that the other district judge failed properly to exercise jurisdiction over another of the complainant's civil rights actions and failed to take steps required by Rule 11. The complainant includes miscellaneous documentation, such as copies of court orders from his cases, his birth certificate, school records, dictionary pages, and copies of records reflecting the complainant's previous employment with the defendant in his initial case.

The complaint is without merit. As an initial matter, the complainant's assertion concerning the district judge's alleged obligation to identify a complaint under Rule 11 presumably refers to Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct). This rule discusses, in part, judicial misconduct complaints identified by the Chief Judge of the circuit. It has no bearing on the present matter.

A review of the relevant dockets indicates that the complainant filed the first of his cases--an employment discrimination proceeding against his former employer--in October of 2004. The case was originally assigned to a district judge (not mentioned in the complaint) who referred the proceeding for alternative dispute resolution (ADR). The ADR Report indicates that the complainant did not appear for the scheduled mediation conference. With the parties' consent, the case was subsequently transferred to the magistrate judge whom the complainant charges with wrongdoing.

The court held a two-day bench trial in April of 2007, at which the complainant called three witnesses and testified himself. In October of 2007, the magistrate judge issued a ten-page decision.

The decision recounted the complainant's history of employment with the defendant and the legal standards applicable to the claims of employment discrimination. Although the court accepted the complainant's contention that he suffered from a disability under the law, it determined that, because the complainant had failed to demonstrate that he had either informed the defendant of his disability or requested an accommodation, the complainant failed to establish employment discrimination under the Americans with Disabilities Act (ADA).

The complainant's dissatisfaction with the result of his appeal of this decision serves as the basis for his allegations against the three appellate judges. The reviewed record indicates that the complainant filed a notice of appeal in November of 2007. The magistrate judge allowed the complainant's motion for leave to appeal in forma pauperis and the court of appeals issued a briefing schedule. The parties filed their briefs and, in March of 2008, after the complainant filed a motion to withdraw the case, the court ordered the case voluntarily dismissed.

In April of 2008, the complainant filed a motion to reopen the case, followed by several letters and another motion to reopen. In May, the presiding panel, composed of the appellate judges identified in the complaints, issued an order denying the complainant's motions to reopen the case. The court held that "no basis appears to relieve [the complainant] of his decision to withdraw his appeal."

During the next several months, the complainant filed thirteen letters with the court. The court denied the complainant's additional requests to reopen his case and ordered the complainant to "refrain from filing further motions or letter[s] . . . as the appeal is over"

Meanwhile, the complainant had filed two civil rights cases: one against the magistrate judge who had dismissed the employment discrimination proceeding, in January of 2008 and another, in June of 2008, against the federal government. The district judge assigned to the first of these cases

issued a nine-page order summarizing the complainant's allegations of discrimination and constitutional violations by the magistrate judge and dismissed the claims as barred by judicial immunity.

The other district judge subsequently issued a thirteen-page decision dismissing the complainant's remaining case. The court described the complainant's previous litigation and his current claim that the district judge handling the complainant's case against the magistrate judge had erroneously concluded that judicial immunity barred his claims. After a comprehensive analysis of the applicable legal principles, this district judge determined that the complainant had failed to raise cognizable claims of constitutional violations by a legitimate party and, because he was effectively attempting to relitigate his dissatisfaction with the magistrate judge's original rulings, dismissed the case with a warning that the complainant's continued filing of further related pleadings or cases would result in the imposition of sanctions.

The reviewed records indicate that the complainant's current compendium of proceedings is nothing more than a thinly veiled attempt to reassert his dissatisfaction with the courts' rulings. The complainant offers no facts suggesting that any of the targeted judicial officers exhibited bias, engaged in improper ex parte communications, or harbored any illicit animus in connection with the complaint's cases. To the contrary, the transcript of the two-day jury trial indicates that the magistrate judge sought to ensure that the complainant, as a pro se litigant, was afforded the opportunity to present his case in full. For example, the court repeatedly denied evidentiary objections proffered by defense counsel. The magistrate judge, in a timely manner, then issued a comprehensive analysis of the complainant's claims.¹ The complainant's only recourse for asserting

¹The words referenced by the complainant ("situation" and "nature"), while appearing in the trial transcript, have no logical bearing on the complainant's charges.

his disagreement with the substance of the court's decision (including the magistrate judge's alleged disregard of "key evidence") was the filing of an appeal.

Nor was the court of appeals legally or ethically obligated to allow the complainant to reopen his case. The court's decisions in this regard are not, in and of themselves, remotely suggestive of judicial wrongdoing. Likewise, the orders issued by the named district judges contain no suggestion of judicial animus.

As the complaints and the reviewed court records provide no evidence in support of the complainant's charges, the complaints are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Absent evidence of bias or other illicit judicial motivation--of which there is none-- the complainant's disagreement with any of the courts' orders does not provide a cognizable basis for a complaint of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules of Judicial Misconduct, Rule 11(c)(1)(B). Finally, where, as here, there is no suggestion of either judicial animus or a pattern of neglect, the allegation of delay--in either the magistrate judge's or the appellate judges' decisions --is also not cognizable. See Rules of Judicial Misconduct, Rule 3(h)(3)(B).

For the reasons stated, Judicial Misconduct Complaints No. 01-08-90023, No. 01-08-90024, No. 01-08-90025, No. 01-08-90026, No. 01-08-90027, and No. 01-08-90028 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

10/16/08
Date


Judge Selya