

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90007

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: AUGUST 20, 2009

Complainant filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The complainant alleges that the judge engaged in misconduct while presiding over two civil rights cases filed by the complainant.

The complainant alleges that the judge exhibited bias against him in dismissing both of these cases. The complainant charges that, in the first case, the judge's bias was evident from his failure to attend to the undisputed facts proffered by the complainant, instead issuing an opinion that was "immoral, dishonest, unprofessional, insulting and contrary to the factual evidence." The complainant initiated this proceeding pro se claiming that the state court had violated his (and his son's) constitutional rights by compelling the son to attend a school "on the basis of his racial classification" The complainant contends that, in order to "protect the image of the State . . . Judicial Branch . . . ," the judge "portray[ed]" the case in "a false light," and engaged in a "slanderous and libelous attack on [the complainant's] credibility, character and reputation" The complainant

adds that the judge should have disqualified himself from this proceeding "because of his obvious bias and preferential treatment towards the State [sic]," and concludes that the judge "knowingly and unethically manipulated the facts of [the complainant's] case to protect the . . . institutional racism" on which the state court's decision was based.

The complainant next contends that the judge issued a "highly questionable" ruling allowing the defendants' motion for summary judgment in the complainant's other case, a civil rights action alleging unlawful arrest in which the complainant was represented by counsel. The complainant asserts that the judge failed to rule on the "full facts and evidence" when he determined that the police had had probable cause to arrest the complainant. The complainant reiterates the alleged facts underlying the proceeding and argues that "[a]ny reasonable and prudent person" would have reached a different decision. The complainant includes a miscellaneous selection of quotations apparently derived from the state court matter that precipitated the complainant's first case, as well as other case citations.

The complainant's charges of bias are baseless. The record of the first case contains no evidence of partiality in connection with the judge's handling of the proceeding. The complainant filed the matter, pro se, and defendants promptly filed motions to dismiss. In the court's lengthy order allowing the motions, the judge analyzed each of the complainant's claims under the applicable standard of review before dismissing them. The judge explained that the state and its officials cannot be sued under 42 U.S.C. § 1983, that because the complainant had already litigated other claims, they were barred by res judicata, that the individual defendants were immune from suit, and that the complainant otherwise failed to state a claim under 42 U.S.C. § 1985. The complainant's recitation of the facts precipitating his case fails to demonstrate that the judge was biased or harbored any

improper motivation in his consideration of the matter. As there is no evidence that the judge was biased in favor of the defendants, the charge to that effect 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 Misconduct), Rule 11(c)(1)(C).

The complaint and the reviewed record also fail to support the claim that the judge was "insulting" or otherwise disrespectful toward the complainant. In initiating his discussion of the case in the order of dismissal, the judge noted that "[b]ecause [the complainant's] claims are so facially deficient, a detailed recitation of the facts is unnecessary." Neither this statement nor any others in the record are "unprofessional, insulting [or a] slanderous and libelous attack on [the complainant's] credibility, character and reputation" As there is no evidence that the judge was rude or in any way inappropriate toward the complainant, any charge to that effect is likewise dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rules 11(c)(1)(C).

A review of the complainant's other proceeding similarly fails to elucidate any evidence of bias or judicial impropriety. The complainant filed that matter against the town and its officials, through counsel, alleging that the complainant had been wrongfully arrested several years earlier. The parties engaged in discovery until the defendants filed a motion for summary judgment to which the complainant objected. After a hearing, the judge allowed the defendants' motion and entered judgment for the defendants.

The reviewed transcript of the hearing on the summary judgment motion demonstrates that the judge first asked the complainant's counsel to clarify each of his federal claims and then heard from each of the parties on each claim. In so doing, the court noted applicable legal precedent, and requested evidence from both counsel on the relevant facts pertaining to the complainant's arrest.

The judge noted that while he was "construing [the evidence] in the light most favorable to [the complainant]," the complainant failed to present viable grounds for relief against any of the defendants in the claim of unlawful arrest. The judge further determined that, as there was insufficient evidence of racial or gender bias, those claims must fail, as well. The hearing transcript contains no evidence of partiality, disrespect or other impropriety in the judge's analysis or conclusions. Accordingly, the charge that the judge exhibited bias in connection with this proceeding is also dismissed as unfounded pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Because the complainant has failed to provide any grounds for the judge's disqualification, the charge that the judge wrongfully failed to withdraw sua sponte is dismissed as not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). Finally, absent evidence of improper motivation -- of which there is none -- the claims arising from the complaint's disagreement with the court's substantive orders are also dismissed as directly related to the merits of the court's rulings. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No. 01-09-90007 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

8/20/09

Date

Scott L. Lynch

Chief Judge Lynch