

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90016

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 20, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a First Circuit district judge. The complainant alleges misconduct in connection with one of the complainant's multiple civil actions.¹

The complainant alleges that the judge exhibited bias against the complainant by failing to act on the complainant's informative motions and by neglecting to timely rule on the complainant's motion to amend the complaint. Because of the judge's alleged mishandling of the complainant's motions, his problems with clerk's office staff, and the "erratic orders" entered by another judge in another of the complainant's cases, the complainant states that he "knew where [this] . . . case was headed," and filed a motion for judicial disqualification. The complainant asserts that the judge then wrongfully "[struck] his own disqualification" and improperly dismissed the case, "back dat[ing]"

¹Court records indicate that the complainant has filed five other civil cases in the district in the past two years, one of which is the subject of another judicial misconduct complaint against a different judge.

the order of dismissal. The complainant further states that the judge's purported grounds for dismissal -- that the complainant "fails to state an actionable cause of action against two professional associations" -- was pretextual and intended to conceal the judge's partiality for the defendants. The complainant adds that, although the judge had allowed the complainant's motion to amend the complaint, the "unexpected and sudden" order of dismissal wrongfully denied the complainant the opportunity to file an amended complaint. The complainant concludes that the judge sua sponte dismissed the case, wrongfully reversing a previous order in which the court had "reviewed and accepted the complaint."

The complainant's allegations of misconduct are baseless. The reviewed materials -- including the misconduct complaint, the docket, and the relevant pleadings and court orders -- contain no evidence suggesting that the judge was biased against the complainant. The record indicates that the judge timely noted and ruled on all of the complainant's motions before issuing an order of dismissal. This order summarized the complainant's claims and explained that, despite the "liberal standard [applied to] pro se pleadings," the complaint "failed to state an actionable cause of action against [two of the defendants] and is foreclosed by jurisdictional, Eleventh Amendment, and judicial immunity considerations." Further, the earlier order cited by the complainant did not "accept the complaint;" it merely allowed the complainant's request to proceed in forma pauperis. Nor are there any facts suggesting that the judge misdated the order of dismissal, intentionally or otherwise. As there is no evidence of bias or other judicial wrongdoing, the complaint is dismissed as frivolous 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).

Furthermore, the judge was not under any ethical or legal obligation to await the amended

complaint before dismissing the case. See e.g. Judicial Council of the First Circuit, Order, In Re: Complaint No. 406, December 22, 2005, at 4 (Issuance of order of dismissal prior to receipt of opposition to motion to dismiss does not alone constitute misconduct.). Accordingly, this charge is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). Finally, insofar as the complaint is based upon the complainant's disagreement with the court's orders -- including, but not limited to, the orders noting the informative motions, the denial of the motion for disqualification, and the order of dismissal, it is not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No.01-09-90016 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

10/20/09
Date

Sandra L. Lynch
Chief Judge Lynch