

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90016

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 18, 2012

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct by issuing erroneous rulings in two of complainant's civil cases.¹ Complainant also alleges that the judge failed to respond to a complaint of impropriety which complainant says complainant had filed against several attorneys and that this failure was an obstruction of justice.

The claims are described more fully. As to the claims about the first civil case, complainant alleges that the judge wrongfully dismissed the case for lack of jurisdiction and then improperly denied motions that complainant filed some years later asking the

¹Court records indicate that complainant, who is incarcerated in state prison, has filed at least 14 civil cases in federal district court.

court to reconsider the order of dismissal and to appoint counsel. Complainant surmises that the judge discriminated against him in dismissing the case initially, and then conspired with the defendant, complainant's former counsel and state court judges in denying the subsequently filed motions.

With respect to the other civil case, complainant alleges the judge wrongfully denied a motion complainant filed requesting a copy of the case file, purportedly doing so in order to protect the economic interests of the defendants.

Finally, complainant contends that the judge intentionally ignored a complaint of attorney misconduct that complainant sent to the judge by certified mail over five years ago. Complainant states that, although he received a receipt indicating that the court received the submission (a copy of which is included with the complaint), he was later informed by the clerk's office, when he inquired over two years later, that the document had not been received. Complainant asserts that the judge obstructed justice by intentionally failing to respond to the complainant's allegations of attorney wrongdoing. Complainant requests miscellaneous relief, including the reassignment of his cases to a different judge, disciplinary action against the judge and others, an investigation of complainant's claims of attorney misconduct, and the appointment of new counsel.

None of the claims gives rise to a misconduct complaint. As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for disqualifying a judge, for modifying an order in a pending or closed case, or for taking disciplinary action against attorneys or others. See Rules for Judicial-

Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19.

The reviewed materials - including the misconduct complaint, the dockets, and the relevant pleadings and court orders from the relevant cases - offer no evidence of discrimination, conspiracy, or other improper motivation on the part of the judge. In the first case, the court issued an order explaining that it lacked jurisdiction over the claims as alleged but noting that the complainant was not barred from raising his claims in state court. When, nearly four years later, complainant requested that the court reconsider this decision and appoint counsel, the judge denied the motions. Nothing about that denial or the original dismissal suggests misconduct.

The judge denied a motion that the complainant filed in the other referenced case almost four years after that case had been closed by another judge. The allegations of misconduct are presented without any basis in fact. They are, therefore, dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C).

Where, as here, there is no information of improper motivation, the complainant's claims disputing the substance of the court's orders in both of the referenced cases are not cognizable under the judicial misconduct statute. See Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, these claims are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, there is no evidence that the judge intentionally ignored a complaint of

attorney misconduct that the complainant says complainant filed with the court.

Available records provide no indication that the submission was received by the judge's chambers, let alone that the judge intentionally ignored it, or did so for improper reasons.

The claim to that effect is dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(C). Insofar as a clerical or other error may have resulted in the misplacement of the document - which has not been demonstrated - this would in no way be indicative of judicial wrongdoing. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 3.

For the reasons stated, Complaint No. 01-12-90016 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B), and 11(c)(1)(C).

9/18/12

Date

Stanley Lynch

Chief Judge Lynch