

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90007

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JULY 30 , 2013

Complainant, a litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct while presiding over complainant's employment discrimination case. The complainant's allegations arise from the judge's conduct during two different time periods.

The complainant first alleges that, during a pretrial/settlement conference, the judge improperly stated that the judge was "offended" by the amount of defendant's settlement offer and that the offer should have been zero. Complainant asserts that, by making these comments regarding the settlement offer, the judge treated complainant in a "demonstrably egregious and hostile manner" and engaged in misconduct.

The complainant's second claim arises from the judge's ruling on a motion that the

complainant filed after the case was closed. Complainant filed this motion to introduce evidence pro se which the court denied as moot. The complainant contends that, by "ignoring [this] incriminatory evidence," the judge exhibited bias.

The reviewed record - including the misconduct complaint, accompanying documentation, as well as the docket, pleadings and orders in the case - demonstrates that the court held a pretrial/settlement conference at which both parties and their counsel appeared. This conference was held after the defendant had moved for summary judgment and the complainant had filed a statement of uncontested facts.

The record further indicates that, during the conference, counsel briefed the judge on the case and the court inquired about any settlement efforts carried out to date. The judge was informed that complainant had made a settlement demand that was countered by defendant with a counter offer but complainant had rejected it. The judge then reportedly explained that the complainant's case was weak (given complainant's admissions and leave history) and that, in the court's view, the defendant had seemingly acted within the law. After the judge inquired and was informed of the amount of defendant's counteroffer, the judge reportedly made the comment to which complainant objects - that the judge was "offended" by the offer and that it should have been zero. The judge reportedly added that the case was a "dismissal waiting to happen" and gave the parties ten (10) days in which to inform the court whether settlement had been reached.

For the purpose of evaluating the present misconduct complaint, I accept as true complainant's claim that the judge made the comment as alleged regarding the settlement offer. It is also taken as true that the judge's statements during the conference, including the comment to which complainant objects, were based exclusively on the record before the court.

A judge's characterization of the merits of a legal claim does not itself suggest an improper motive, hostility or misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3, and Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 3-4, and cases cited ("It is well settled that judges are entitled to form views about the merits [of a case] and to express them so long as the judgments rest on the evidence and arguments in the proceeding itself; remarks that may prejudice the jury are a different matter . . ."). This is true even where, as here, the judge's stark choice of words was less than diplomatic. While it might have been preferable for the judge to have been more circumspect in evaluating the settlement offer, there was no misconduct under the statute. See 28 U.S.C. § 351, *et. seq.*

The comments at issue were made during a conference at which complainant was represented by counsel and not in the presence of a jury. They were part of the judge's overall evaluation of the case based exclusively on the record to date. They reflected the judge's view that complainant was rejecting a more than reasonable offer of settlement in

light of the clear weaknesses in his case. Taken in context, the judge's conduct as alleged does not amount to treating the complainant in a "demonstrably egregious and hostile manner," Rules of Judicial Conduct, Rule 3(h)(1)(D), or otherwise engaging in misconduct. Accordingly, the claim to that effect is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

The remaining allegation - that the judge exhibited bias by "ignoring" evidence that the complainant submitted after the case had been dismissed - is not cognizable. The record demonstrates that, after the failed settlement negotiations, several of complainant's multiple attorneys withdrew on the ground that complainant had declined to follow their advice to accept the settlement offer. Thereafter, complainant's remaining counsel moved for voluntary dismissal of the case without prejudice. As the litigation was nearing trial and the defendant had expended substantial time and funds, the court dismissed the case with prejudice and entered final judgment. In so doing, the judge noted that the defendant's pending motion for summary judgment would have otherwise been allowed.

Several days later, complainant filed a motion pro se seeking to introduce video and audio evidence in support of his claims. Noting that the case was closed, the court denied this motion as moot.

There is no evidence in the misconduct complaint or the reviewed record indicating that the judge was biased or improperly motivated in issuing this ruling. The complainant's disagreement with the judge's denial of this motion does not alone

constitute a cognizable misconduct complaint. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling . . ."). Accordingly, this claim is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Because the misconduct complaint provides no evidence of judicial bias or misconduct, it is also dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaint No. 01-13-90007 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(C).

7/30/13

Date

Sandra Lynch

Chief Judge Lynch