

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90011

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 25, 2014

Complainant, an incarcerated, criminal defendant, filed a complaint, under 28 U.S.C. § 351(a), alleging that the district judge who presided over complainant's civil actions against prison officials engaged in wrongdoing. Complainant alleges that the judge failed to adequately respond to complainant's claims that the defendants were not complying with a settlement agreement regarding complainant's medical care.¹

Complainant filed his first case almost 30 years ago against prison officials for allegedly failing to meet his medical needs in violation of the Eighth Amendment. The

¹Court records indicate that complainant passed away since he filed the present complaint. There is no indication that his death was related in any way to the issues raised in the present matter. "As long as the subject of the complaint performs judicial duties, a complaint alleging judicial misconduct must be addressed." Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary to Rule 11, *citing* Breyer Committee Report, 239 F.R.D. 116, 245 (2006).

case first settled in 1990. Roughly five years later, complainant filed a motion for enforcement and/or for contempt claiming that defendants had failed to comply with the stipulation and agreement governing his medical care and that of other inmates. After a hearing, the judge denied the motion for contempt but ordered the defendants to submit biannual reports to the court on the complainant's medical care, prepared by an independent medical reviewer.² The defendants continued to submit these reports twice yearly until complainant's death last month.

Complainant details the chronology of a faulty leg brace and contends that, despite multiple complaints to the prison and to the court in 2013, the brace was not replaced until "some 447 days after his initial complaints." Complainant asserts that, during the relevant time, the defendants' status reports contained false information indicating that the brace had been evaluated, replaced and was functioning adequately.³ Complainant concludes that, despite this evidence to the contrary, the judge improperly determined that the status reports were credible, denied his motions for contempt in this case and dismissed another related case that complainant filed about four years ago alleging that he had suffered an "assault and battery" while being moved to another facility.⁴

²Complainant was represented by counsel until after this contempt proceeding, since which time he has appeared pro se.

³Complainant says that the reports refer to a back brace but contend that they are intended to refer to complainant's leg brace.

⁴Complainant asserts that he sought the judge's recusal in one of his letters to the court but there is no indication of such a motion on the docket or in the letters reviewed in connection

Finally, complainant contends that, although his motion to proceed in forma pauperis had been allowed, he was wrongfully charged a filing fee in the second of his two cases, payments toward which have been improperly deducted from his prison account.

The misconduct complaint is baseless. Complainant offers no information suggesting that the judge was biased or engaged in any impropriety over the almost 30 years he presided over the complainant's cases. As complainant observes, in response to a motion for contempt, filed roughly five years after the settlement was reached, the court denied the motion but mandated the defendants to submit biannual status reports on complainant's medical care, prepared by independent medical reviewers. The reviewed record indicates that, for the past 19 years, the judge has monitored these reports, ensured complainant's physical or telephonic access to hearings and the production of transcripts at no cost, and repeatedly required the defendants to respond to complainant's claims of substandard care. The judge also denied the defendants' request to submit the reports under seal because the defendant objected. Having determined that the defendants were in "substantial compliance" with the court's orders, the judge denied two other motions for contempt, both well before complainant raised the issue with the leg brace.

There is conflicting information in the recent status reports regarding complainant's brace. Only the last report, submitted after the filing of the present

with this matter.

complaint, gave any indication of a problem with replacing the leg brace. Complainant submitted a number of letters to the court over the past year complaining of a multitude of issues, including the leg brace. The absence of court action in response to these recent submissions is not remotely indicative of judicial wrongdoing.

In June 2011, the judge issued a lengthy memorandum and order dismissing some but not all of the claims raised in complainant's later case concerning, in part, complainant's prison transfer. The judge subsequently dismissed the case, as complainant alleges, because complainant had failed to oppose the defendants' apparently meritorious motion to dismiss.

As there is no evidence in the misconduct complaint or in the lengthy record of complainant's proceedings suggesting that the judge was improperly motivated or engaged in any wrongdoing while presiding over either of complainant's cases, the misconduct complaint is dismissed as groundless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Finally, with regard to the filing fee in the second case, the record indicates that, while the court had allowed the case to proceed without the prepayment of fees, the court's order required complainant to pay in monthly installments. Complainant's objection to this ruling, as well as to the dismissal of this case and to the denial of complainant's contempt motions in the first case, does not constitute cognizable

misconduct. "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related." Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the misconduct complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-14-90011 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)(D).

9/25/14
Date

Sandra Lynch
Chief Judge Lynch