

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90017

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: APRIL 9, 2015

Complainant, the plaintiff in an employment discrimination case, alleges that the district judge who presided over complainant's unsuccessful jury trial was biased against him and that, as a general matter, the judge is biased against plaintiffs in employment discrimination cases. Complainant, who was represented by counsel in the underlying case but brings this complaint pro se, contends that the judge issued erroneous pretrial and evidentiary orders, failed to convene an impartial jury, and mismanaged the case in order to ensure that complainant would not prevail.

Complainant summarizes the chronology of his litigation as he understands it. However, as described below, it appears that complainant misunderstands both the chronology and events in his case in several significant respects. Complainant reports that he originally filed a variety of administrative complaints and a state court action

against his employer at the time, alleging “racism, discrimination, harassment, retaliation, hostile work environment [and] wrongful termination” Complainant asserts that, after the defendant removed the case from state to federal court, the judge to whom it was originally assigned, “over a course of several years,” denied defendant’s repeated motions to dismiss complainant’s charges of discrimination, hostile work environment and wrongful termination.

Complainant contends that the case was then reassigned to the judge who is the subject of the present complaint and that this judge then referred the case to mediation. Complainant alleges that, during the mediation, he was “pushed to settle [the] case and was offered as high as almost \$500,000 to walk away” Complainant asserts that defense counsel told complainant “to [his] face” that the judge “would never allow [complainant] to win . . . ,” that the judge “does not fare well with employment discrimination cases,” and that, even if complainant got to trial, the judge “will not allow [complainant] to win it.” Complainant continued that, after the defendant left the room, the federal mediator and complainant’s counsel reiterated that the court “will not let in [the] employment discrimination portion of the case.”

Complainant continues that, after he declined the settlement offer, the defendant’s summary judgment motion was referred to a magistrate judge who denied the motion and allowed complainant to proceed on all three counts – discrimination, hostile work environment and wrongful termination/retaliation. Complainant contends that, on the business day before the trial was scheduled to begin, complainant learned that the subject

judge just “threw out [complainant’s] discrimination claim,” thereby “destroy[ing]” complainant’s case. Complainant adds that, in order to ensure that complainant’s case would not succeed, the judge made additional adverse rulings precluding the admission of certain evidence and the testimony of several key witnesses.

Complainant further alleges that the judge allowed the defense witnesses to remain in the courtroom, enabling them to ensure that their testimonies were perfectly consistent. Complainant asserts that the judge wrongfully limited the duration of his trial to one week, gave complainant’s counsel only eight (8) hours to put on complainant’s case, “pressured the [j]ury to conclude [deliberations]” and told the jurors that “this decision will not go into the weekend” Complainant adds that the court wrongfully required the jury to reach a unanimous verdict.

Complainant also alleges that the judge improperly convened an “all white” jury, except for one person, that the location of the trial is racist, and that several of the jurors were from the same towns as the “perpetrators.” Complainant further asserts that the judge neglected to correct an error in the jury instructions that complainant’s counsel pointed out to the court, before the judge distributed them to the jury. Complainant adds that the jury returned with a question on this very issue, which the judge said was immaterial, before the jury decided the case against complainant.

Complainant concludes that the judge “had blatant hostility towards workplace employment discrimination cases,” and that his handling of the proceeding denied complainant his right to a fair trial. Complainant observes that the Court of Appeals

denied complainant's request for a new trial. He asserts that the appellate and district judges "are friends, they dine together and will not change the decision made by one of their peers." Complainant requests an investigation into the judge's "past policies" and decisions, "ties" to the defendant's law firm, and investments.

Limited Inquiry

A thorough review of the record in the case – including the docket, relevant pleadings and orders, and the transcript of the five day jury trial – lends no support to complainant's claim that the judge was biased or improperly motivated in handling complainant's case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) ("In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry."). The record suggests that complainant may have misunderstand some of the relevant chronology and events in his case and that this misinformation may have contributed to his claims which are, in fact, unfounded.

First, the first federal judge who presided over the case did so for just over a year and did not make any rulings on the viability or merits of complainant's claims. During that time, the court only entered several orders pertaining to change of counsel, discovery and other procedural matters.

Second, in ruling on the defendant's summary judgment motion, the magistrate judge did not allow complainant to proceed on all three counts – discrimination, hostile work environment and wrongful termination/retaliation. The magistrate judge, in fact,

recommended the dismissal of complainant's discrimination claims on summary judgment, before the case was referred to mediation. Shortly after the case was reassigned to the subject judge, the magistrate judge held a hearing on the summary judgment motion and issued a lengthy report recommending that the motion be denied as to two of complainant's claims (retaliatory discharge and hostile work environment) but allowed as to his claims of racial discrimination. The magistrate judge determined that the discrimination claims were either untimely or lacked any evidence of improper racial animus. The subject judge adopted the magistrate judge's recommended decision, thereby dismissing the discrimination claims, and subsequently referred the case to mediation.

While there is no transcript of the confidential mediation, complainant's contention that he was "pushed to settle" by both attorneys and the mediator is not indicative of bias or impropriety on the part of the judge. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A) ("A complaint must be dismissed . . . to the extent that the chief judge concludes that the complaint . . . alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts . . ."). Moreover, in purportedly reiterating that the judge "will not let in [the] employment discrimination portion of the case," the mediator and complainant's counsel were merely explaining to complainant that the discrimination claims had already been dismissed by the court.

After the unsuccessful mediation, the judge denied a number of defendant's pretrial motions, some without prejudice. There was no objection on the record concerning voir dire or the composition of the jury. While the court limited the amount of time available for each side to present evidence, it did so equitably and counsel did not object. Complainant was not denied the right to present any testimony, cross-examine any witnesses, or make any argument. Nor was there any sense during the five day trial that either party was being unduly rushed. The judge also did not "pressure" the jury to expedite its deliberations.

Throughout the trial, the judge overruled many of defendant's objections and heard patiently from both parties on every issue before making a ruling. The same held true at the charge conference, during which the judge went through each side's proposed instructions and complainant's counsel offered no objections.

The issue in the verdict form and which formed the basis of complainant's motion for a new trial and subsequent appeal was whether to include a specific email as "protected activity" under the governing law. The court heard from both sides on the issue and took the matter under advisement before denying complainant's request to include the referenced email in the verdict form.

With respect to an unrelated error that was subsequently noted on the jury form and pointed out to the court, the judge observed that he had correctly instructed the jury on the matter and then explicitly reminded them of the issue when the forms were

distributed.¹ The court did not neglect this error, as complainant alleged, but verbally corrected it while instructing the jury.

Finally, as noted by complainant, the jury returned with a question relating to “retaliatory termination.” In responding, the judge in fact rejected the defendant’s requested clarification and, in agreement with complainant’s counsel, redirected the jury to the full instruction on that issue. The judge did not, as alleged, disregard the jury’s question, deem it immaterial, or respond in a way that complainant’s lawyer found objectionable. The jury then deliberated for under two hours before returning a verdict for defendant on both counts - hostile work environment and retaliatory discharge.

Complainant filed a motion for a new trial on the ground that the jury verdict form prevented the jury from determining a key element of complainant’s retaliation claim (by omitting the referenced email). The judge denied the motion without explanation, and the Court of Appeals affirmed the ruling, explaining that the questions on the jury verdict form reflected the jury instructions complainant had requested and was granted. The Court of Appeals also found that any omission of the referenced email in the verdict form was harmless error.

There is no information anywhere in the misconduct complaint or in the reviewed record of the case suggesting that the judge was biased or improperly motivated in his handling of complainant’s case. Accordingly the misconduct complaint is dismissed as

¹ The error concerned the three types of damages that might have been awarded had the jury found that the defendant was liable; a reference to one type had been omitted on the form but the court clarified that the jury should consider all three if it answered “yes” to the liability question (which it did not).

lacking factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules for Judicial-Conduct, Rule 11(c)(1)(D) (“A complaint may be dismissed . . . to the extent that the chief judge concludes that the complaint . . . is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred . . .”).

There is likewise no support for complainant’s related contentions of generalized bias on the part of the judge in employment discrimination cases. Neither the complaint nor the record contain any facts suggesting that the judge had been improperly influenced or had formed an opinion of complainant’s case or any other case based on any extraneous information beyond the record. See e.g., Boudin, C.C.J., In Re: Judicial Misconduct Complaint No. 444, January 23, 2007, at 3-4 (“It is well settled that judges are entitled to form views about the merits, and to express them, during the course of the case so long as judgments rest on the evidence and arguments in the proceeding itself . . . [and] the judge did not prevent argument or evidence from being presented. . . .”). Any such claim is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(B), and Rules for Judicial-Conduct, Rule 11(c)(1)(D).

Where, as here, there is no evidence of improper motive on the part of the judge, complainant’s disagreement with rulings made in the case do not constitute cognizable misconduct. These include, but are not limited to, the court’s adoption of the magistrate judge’s ruling on summary judgment, its determinations on the jury’s composition, instructions and verdict form, its evidentiary rulings, and its ruling on the motion for a new trial. Accordingly the misconduct complaint is dismissed as not cognizable,

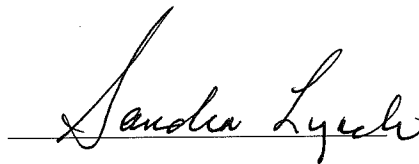
pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B) (“A complaint must be dismissed . . . to the extent that the chief judge concludes that the complaint . . . is directly related or the merits of a decision or procedural ruling . . .”).

The same holds true for complainant’s objection to the time limitations that the court imposed on the presentation of evidence. Setting reasonable and equitable time limits on the duration of trial proceedings is a necessary element of a judge’s court management responsibilities. There is no evidence suggesting that the judge improperly exercised that discretion in his management of complainant’s trial. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-14-90017 is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

4/9/15

Date



Chief Judge Lynch