

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-15-90009 and 01-15-90010

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: AUGUST 11, 2015

Complainant is a pro se plaintiff in a civil rights case filed against multiple government agencies and officials in a First Circuit district court. Complainant has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against the district judge and the magistrate judge who presided over the case.¹ Complainant alleges that the judge and magistrate judge have improperly delayed in issuing rulings in the case. The misconduct complaint is not cognizable and is frivolous.

In multiple submissions, complainant alleges that the judges' delay in ruling on complainant's filings in the case demonstrates that the judge and the magistrate judge intend to "obsessively deny [complainant's] right to due process." Complainant alleges that, because the district judge harbors an illicit motive and has engaged in an "habitual

¹ Complainant identifies a case manager on the complaint form, as well. The judicial misconduct complaint procedure does not provide an avenue for filing complaints against court staff. See 28 U.S.C. § 351(a). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 4 and 8(c). Where appropriate, allegations of wrongdoing by court staff will be addressed independently by the supervisor, clerk or Circuit Executive. In the present matter, complainant offers no facts suggestive of wrongdoing by the staff member.

pattern of delays," the judge has engaged in misconduct under Rule 3(h)(3) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct).² Complainant contends that the judge has demonstrated "habitual patterns of delay" in handling complainant's prior cases in order to "bar [complainant] from the courts, jury, due process and [] justice" to which she is entitled.

Complainant recounts her experience as a pro se litigant who has "had to fight for [] justice . . . for a long time." Complainant argues that the judge's failure to respond to her initial pleadings within 90 days "makes the Court and judge guilty of intentional delays on a most urgent matter." Complainant further asserts that the court's "refus[al] to act upon [complainant's] emergency motions" made the judge an "accomplice" to the defendants' "criminal activity."

Complainant adds that the magistrate judge "blatantly violated an eighth amendment right [by] prolonging the cruel and unusual punishment [complainant and her son] were being exposed to within [their] residence." Complainant further "believes" that "this Judge is engaged in ex-parte communication with the defendants." (It is not clear whether complainant is referring here to the district or magistrate judge.) Complainant has "no doubt that [the judge] is engaged in ex parte-communications [because the judge] is delaying [complainant's] life for the guilty, ignoring constant harassments by

² Rule 3(h) provides:

Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an *improper motive* in delaying a particular decision or *habitual delay* in a significant number of unrelated cases (emphasis added).

Rules of Judicial-Conduct, Rule 3(h)(3)(B).

defendants and vital judges, as all other Judges have done." Complainant concludes that, by taking advantage of complainant's pro se status, the judge is "guilty of acting without jurisdiction and criminal acts."

The complaint and the reviewed record in the case, including the docket and relevant pleadings and orders, contain no evidence of improper motive on the part of either the district or magistrate judge. The record indicates that, several days after the case was filed, the magistrate judge granted complainant's IFP motion, waiving the filing fee. Two weeks later, complainant filed a motion seeking the removal of both the judge and the magistrate judge judges from the case "based upon no order received addressing the urgent issue requested in last motion to appoint counsel and expedited relief for possibly saving lives." Shortly thereafter, the magistrate judge denied complainant's motion for emergency relief, ruling that the matter would be adequately addressed by the court's preliminary review.

The district judge subsequently denied the motion for recusal and issued a comprehensive order addressing each of complainant's pending motions. Finding the complainant's claims to be "irrational and [] wholly incredible," the judge ordered complainant to show cause why the matter should not be dismissed. As the judge determined that complainant's subsequent response provided no facts upon which relief might be granted, the judge dismissed the case.

Where, as here, there is no evidence of improper motive, allegations of delay are not cognizable. "Cognizable misconduct . . . does not include . . . an allegation about

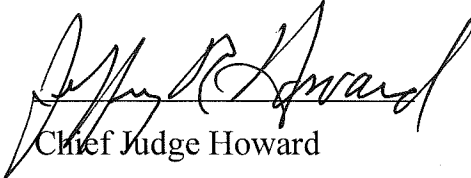
delay in rendering a decision or procedural ruling." Rules of Judicial-Conduct, Rule 3(h)(3)(B). See also nte. 2, *supra*. Nor is there any evidence of any appreciable delay in this matter, let alone evidence of delay in a "significant number of unrelated cases." (Complainant had one previous case in the court which was presided over by another judge.) Accordingly, complainant's allegation of delay 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).

As there is no evidence of any judicial impropriety, including ex parte communication or conspiracy, the complaint is also dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Insofar as the complainant objects to the substance of rulings issued in the case, including but not limited to the orders denying emergency injunctive relief, denying the motion for recusal or dismissing the case, the complaint is dismissed as directly related to the merits. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint Nos. 01-15-90009 and 01-15-90010 are 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), respectively.

August 11, 2015

Date


Chief Judge Howard