

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-15-90014

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: NOVEMBER 3, 2015

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Complainants have filed a complaint of misconduct, under 28 U.S.C. § 351(a), alleging that the district judge who presided over their civil rights case exhibited bias, and engaged in coercion and other wrongdoing. Complainants were originally represented by counsel but their attorney withdrew after mediation proved unsuccessful. Complainants' allegations are dismissed as baseless and as not cognizable.

Complainants allege that the judge harbored "malice" against complainants, endeavored to "illegally deny [complainants' their] right to a fair trial" and exhibited "bigotry and sexism." Complainants contend that the judge "pollut[ed]" the docket in the case by ignoring or denying complainants' repeated motions to remove prejudicial and private docket entries, including those regarding a mediation that was conducted by a magistrate judge. Complainants assert that the judge used the mediation as a means of

"coercion" because complainants were acting pro se, conspired with complainants' former counsel in order to "embarrass" complainants, and repeatedly and intentionally misstated facts. Complainants add that, after "wast[ing] an enormous amount of time" by denying complainants' requests to "clear[] the docket of unrelated banter," the judge "became absurdly and unnecessarily confrontational," in an effort to "cover up an illegal ADR [Alternative Dispute Resolution] process and [] manipulate the result [of the proceeding]."

Complainants further allege that the judge exhibited sexism by denying complainants' request for additional time in which to respond to the defendants' summary judgment motion so that one of them could travel overseas to attend a family reunion. Complainants charge that the court "delayed [the] case for months and/or years," but would not allow complainants the three additional weeks they requested. Complainants add that the judge misidentified their motion requesting a new judge as a motion for recusal, "which is quite different," and then wrongfully denied it. Complainants conclude that, "after three years of constant delays by attorneys and the Court, [the judge] dismissed [the] case out of apparent spite and malice towards a minority Christian woman."

A review of the complaint, and record in the case - including the docket, pleadings and orders - fails to lend any support for complainants' allegations of judicial malice,

coercion or any other wrongdoing.<sup>1</sup> The record indicates that the parties jointly requested that the case be referred to the court's alternative dispute resolution (ADR) program for mediation. Complainants were, at that time, represented by counsel. Before the mediation, the defendants filed a motion for summary judgment on which the parties agreed to defer resolution pending the mediation.

When the magistrate judge who conducted the mediation initially indicated the case had settled, the district judge issued an order of dismissal pending consummation of the final settlement agreement. When issues arose, however, in finalizing the settlement, the defendants filed a motion seeking, in part, to enforce the settlement agreement, and complainants' counsel moved to withdraw, citing an irretrievable breakdown of the attorney-client relationship. Complainants asserted that the mediation was improper and also sought to discharge their attorneys.

After another meeting during which the magistrate judge failed to resolve the issues, the court denied the defendants' motion to enforce the settlement, reopened the case, and allowed complainants' counsel to withdraw. The court also gave complainants two weeks in which to respond to defendants' summary judgment motion. Over the next several months, the judge allowed no fewer than four additional motions that complainants filed, *pro se*, seeking additional time in which respond to the summary

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<sup>1</sup> Complainants include a letter that was submitted to the court last year with several motions. Complainants state that they intended for this letter to serve as a judicial misconduct complaint. It was not received by the office that handles misconduct complaints. Complainants reiterate the allegations presented in the letter in the present misconduct complaint.

judgment motion. Complainants initially indicated that they were retaining new counsel who needed more time to review the case. The judge allowed this motion and stated that the court would entertain a motion for another brief extension, if filed by successor counsel.

When an issue arose with regard to complainants' access to their former attorney's file, the court reviewed the documents *in camera*, resolved the dispute in complainants' favor and issued another extension. Complainants, nonetheless, continued to seek various forms of relief, including a stay of the proceedings, an additional extension to accommodate one of the complainant's travel plans, monetary sanctions and a new judge. The judge denied these motions, noting that the court had allowed multiple extensions of time since the summary judgment motion had first been filed and that the complainant who was travelling could assist remotely with submission of the opposition, if needed.

The judge twice warned complainants that further extensions would not be forthcoming and failure to respond to the summary judgment motion could result in dismissal of the case. When complainants ultimately failed to respond as ordered, the judge dismissed the case for failure to prosecute.

The record demonstrates that, far from exhibiting malice, coercion, or other illicit animus, the judge afforded complainants ample time and opportunity in which to pursue the litigation after the dissolution of the voluntary mediation. The court explained that complainants would retain the opportunity to dispute any fee award to their former counsel and ensured that complainants had access to all needed materials from their

previous attorney's file, as well as additional time in which to consider the material once it was made available. On these facts, the allegations of judicial coercion, malice or other improper motivation are dismissed as baseless. See 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).

Complainants' claim that the judge's final order dismissing the case reflects gender or religious bias is utterly untenable. There is no information whatsoever to support the conclusory assertion that the final order of dismissal, issued after a multitude of extensions and warnings, was a product of gender, religious or any other bias. Accordingly, this claim is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

With respect to complainants' claims of docketing errors, it is unclear which entries complainants found objectionable. There are several notations indicating that corrections were made to the docket a few months after the case was filed. Regardless, there is no evidence that the judge intended to invade complainants' privacy, breach any rules of confidentiality or otherwise release private information. Accordingly, any such claims are dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Insofar as complainants object to the substance of rulings issued in the case - pertaining to docketing, recusal, the final order of dismissal or any other matters - such claims are not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable

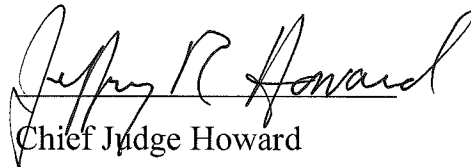
misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."). These allegations are dismissed, pursuant to 28 U.S.C.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

The claim of delay is also not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(B). Accordingly, complainants' claim that the judge "wasted . . . time" is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).<sup>2</sup>

For the reasons stated, Complaint No. 01-15-90014 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), respectively.

11.3.15

Date

  
Chief Judge Howard

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<sup>2</sup> Although not necessary to the disposition of the matter, the record demonstrates that the judge promptly ruled on all matters. Any delay in the proceedings is attributable to the many motions for extensions filed by both parties, both before and after the mediation.