

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-15-90021, 01-15-90022, 01-15-90023 and 01-15-90024

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JANUARY 12, 2016

Complainants have filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge who dismissed their pro se civil case.¹ Complainants allege that the judge discriminated against them because of their ethnic status by wrongfully denying their request for appointed counsel and by dismissing the proceeding. The complainant in the first matter, No. 01-15-90021, makes the same claims against the judge with respect to another civil case in which he was the only plaintiff. The misconduct complaints are not cognizable and are baseless.

¹ Two of the four complainants are not named plaintiffs in the case but have similarly aligned interests to the plaintiffs. After receipt of the four identified complaints, thirteen (13) additional filings were received, identical to Complaints Nos. 01-15-90022, 01-15-90023 and 01-15-90024, except for the named complainant. On November 5, 2015, the Judicial Council issued an order, pursuant to Rule 10(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), directing the Circuit Executive not to accept the 13 repetitive complaints and any other subsequently received duplicative complaints. See Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaints Nos. 01-15-90021, 01-15-90022, 01-15-90023 and 01-15-90024, November 5, 2015.

Complainants allege that the judge violated their Constitutional rights in presiding over the civil case, in which plaintiffs sought financial and other relief for alleged violations of contractual agreements and federal law. Complainants allege that the judge violated: the First Amendment, by denying their rights to be heard in federal court and to "petition the government for redress of grievances"; the Fifth Amendment, by depriving them of "liberty and property without due process of law"; the Sixth Amendment right to counsel, by failing to appoint an attorney to represent the plaintiffs; the Seventh Amendment, by denying their rights to a jury trial and legal assistance; and the Eighth Amendment, by inflicting cruel and unusual punishment. Complainants surmise that the judge had an "alternative motive" to deny the rights of complainants and others of their ethnic status.

The complainant in the first matter, No. 01-15-90021, further alleges that the judge violated his Sixth Amendment right to counsel by failing to appoint an attorney to represent him in an employment discrimination case that he also filed pro se. Complainant argues that the right to court-appointed counsel should extend to needy plaintiffs in civil cases who cannot afford an attorney. Complainant recounts the economic hardships facing his community and concludes that the judge's decision not to appoint counsel in both cases was "discriminatory" and a "violation of civil rights."

Complainants offer no evidence that the judge harbored a discriminatory motive in ruling on either case. Their conclusory allegations of bias derive exclusively from the substance of orders with which they disagree. The record of complainants' civil action

demonstrates that, in multiple orders, the judge clearly delineated the legal deficiencies in complainants' pleadings and gave them multiple opportunities to cure these defects by filing amended complaints and in forma pauperis motions, and by retaining counsel. The judge explained that the appointment of counsel in civil cases is discretionary and that the impediments confronting complainants' underlying claims weighed against doing so in their case. When complainants failed to comply with the court's directives, the judge dismissed the case without prejudice. There is no information in the misconduct complaints or in the record suggesting that the judge's rulings denying the requests for appointed counsel or dismissing the case were a product of any illicit motivation.

The same holds true for the first complainant's objections to the judge's handling of his other case. In that matter, a magistrate judge recommended dismissal of the case because complainant neglected to provide sufficient factual specificity in his pleadings under the Federal Rules of Civil Procedure. In accepting the magistrate judge's recommendations to dismiss the case and to deny the request for the appointment of counsel as moot, the district judge explicitly noted that dismissal "without prejudice" did not preclude complainant from refiling the proceeding.

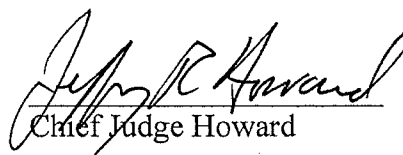
There is no evidence that the judge was biased against complainants, either because of their ethnicity or for any other reason, or otherwise sought to interfere with the exercise of their constitutional rights in presiding over either of the referenced cases. Complainants' allegations amount to nothing more than objections to the substance of the court's orders. As such, the complaints are dismissed as not cognizable. See 28 U.S.C. §

352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also 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.").

Because the misconduct complaints offer no evidence of bias, improper judicial motivation or other wrongdoing on the part of the judge, they are 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)(D).

For the reasons stated, Complaints Nos. 01-15-90021, 01-15-90022, 01-15-90023 and 01-15-90024 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)(D), respectively.

1.12.16
Date


Chief Judge Howard