

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90033

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JANUARY 4, 2017

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge was biased against him while presiding over complainant's civil case. The misconduct complaint is baseless and not cognizable.¹

Complainant asserts that, due to a conflict of interest arising from the judge's former employment, the judge was "automatically disqualified" from presiding over complainant's case. Complainant alleges that the judge wrongfully denied a number of complainant's motions, including his motions to appoint counsel, motions for recusal, motion for default judgment, and his requests for injunctive relief, costs and fees.

Complainant maintains that the court's denial of his first motion to recuse demonstrates

¹ Complainant submitted additional documentation subsequent to the original complaint, which has been reviewed in conjunction with the original filing.

that the judge did not even read the motion, suffers from "mental illness" or acted out of "deep-seated favoritism or antagonism." Complainant requests that the judge recuse from his case, that there be a hearing "to provide further clarification and documentation for the record," presumably before another judge, and that the Judicial Council assist complainant with settling the underlying litigation.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining an order in a pending or closed case, including the recusal of a judge, the appointment of counsel or assistance with litigation. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

Complainant's allegations of conflict of interest, bias and disability are baseless. The reviewed record indicates that, shortly after complainant filed a civil complaint, a motion to proceed in forma pauperis (IFP) and a motion for appointment of counsel, complainant sought injunctive relief. The judge issued a lengthy memorandum and order, denying the motions for injunctive relief because complainant failed to show a likelihood of prevailing on the merits and also denied the IFP motion and the motion for appointment of counsel, both without prejudice to renewal after correcting several deficiencies.

The court subsequently allowed complainant's several requests for extensions of time to file amended pleadings, but denied his continued requests for the appointment of counsel, explaining that complainant failed to demonstrate the "exceptional

circumstances" necessary for the appointment of counsel in a civil case. The court also allowed several of the defendants' motions to dismiss and, over complainant's objection, authorized another defendant to file a motion to dismiss one day late due to a calendaring error.

The judge denied complainant's repeated motions to amend his complaint and for injunctive relief. As with all of the district court's orders, the judge thoroughly explained the reasons for each of these rulings, noting, with respect to the request for injunctive relief, that complainant was not seeking to preserve the status quo but to obtain damages. Shortly thereafter, complainant filed his first motion for recusal, which the judge denied on the ground that complainant did not meet the statutory requirements. Complainant has continued to file motions to disqualify the judge, for the appointment of counsel and to obtain injunctive relief, all of which the judge has denied.

The misconduct complaint and the reviewed record of the proceeding contain no information to support the allegations of bias, disability or any other wrongdoing with respect to the judge's handling of complainant's case. Further, the judge's former employment does not demonstrate a conflict of interest, require disqualification or evidence misconduct. See Code of Conduct for United States Judges, Canon 3(C)(1). Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

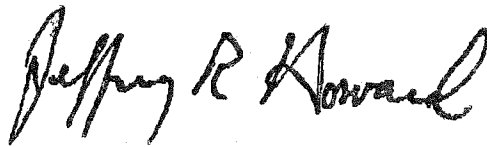
Where, as here, there is no evidence of improper judicial motive, complainant's objections to the court's rulings, including denial of the motions for injunctive relief, the

appointment of counsel and for recusal, are not cognizable under the judicial misconduct statute. 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.").

For the reasons stated, Complaint No. 01-16-90033 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.

1/4/2017

Date

A handwritten signature in black ink that reads "Jeffrey R. Howard". The signature is written in a cursive style and is positioned above a horizontal line.

Chief Judge Howard