

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90034 and 01-16-90042

BEFORE
Torruella, Circuit Judge

ORDER

ENTERED: FEBRUARY 8, 2017

Complainant, a pro se litigant, has filed complaints of misconduct, under 28 U.S.C. § 351(a), against a magistrate judge and a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with a civil matter over which the subject judges preside. The misconduct complaints are baseless and not cognizable.

Complainant filed a previous misconduct complaint against a bankruptcy judge in 2013, in connection with a related proceeding. That complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(B). See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-13-90012, October 31, 2013. The First Circuit Judicial Council affirmed the dismissal. See Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90012, January 16, 2014.

Complainant asserts generally that the subject judges have violated his rights to due process and to an impartial tribunal in presiding over the ongoing civil suit.

Complainant also alleges that the federal court system is biased against minorities.

Complainant alleges that the magistrate judge is biased in favor of defendants in the underlying civil matter. Specifically, complainant contends that the magistrate judge has personal and professional connections with one defendant, and that the magistrate judge receives financial benefits from another defendant in return for favorable rulings. Complainant also alleges that the magistrate judge has a professional connection with a non-party "material witness." Complainant argues that these alleged relationships require the magistrate judge to recuse from presiding over the case. In addition, complainant asserts that the magistrate judge has exceeded statutory authority in advising the district judge and continues to issue "illegal" orders against complainant, "usurp[ing] Federal Rules and Law," despite complainant's motion for recusal.

Complainant alleges that the district judge has improperly delayed complainant's proceeding by staying the case and "refusing to rule" on pending motions. Complainant adds that the district judge's clerk refused to docket a pleading that complainant submitted.

As an initial matter, to the extent that complainant seeks the magistrate judge's recusal or a ruling on a pending motion, 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. 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.

A review of the record of the case provides no factual support for complainant's conclusory allegations of judicial bias or wrongdoing. The magistrate judge has issued several rulings in the case - allowing a defendant's motion to quash discovery, denying complainant's motion to recuse, and finding good cause to cancel a pretrial conference and postpone issuance of a scheduling order. Complainant offers no specific facts indicating that the magistrate judge has a professional or personal connection with any party or witness, let alone one that would give reason to question the magistrate judge's impartiality in complainant's proceeding. Complainant's claims that the magistrate judge abused judicial authority or exhibited bias against minorities are also presented without any basis in fact.

There is likewise no support in the reviewed record for complainant's claims that the district judge exhibited bias in connection with complainant's proceeding, based on race or any other factor. The district judge has issued orders denying complainant's motion to strike the pleadings filed by one of the defendants and granting defendants' motion to stay. As there is no evidence in these orders, the complaint or elsewhere in the reviewed record indicating that either the magistrate judge or the district judge is biased or has engaged in any other wrongdoing in presiding over complainant's proceeding, the complaints are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Absent evidence of improper judicial motive, complainant's objection to the court's orders, including the magistrate judge's decision not to recuse, does not constitute judicial misconduct. 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, including a failure to recuse, without more, is merits-related."). The related allegation that the district judge has improperly delayed in ruling on pending motions is not cognizable. See id. Rule 3(h)(3)(B) ("[A]n 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[,] is not misconduct); see also id. Commentary on Rule 3 ("With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related."). Accordingly, the misconduct complaints are dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, complainant's claim of error or wrongdoing by a docketing clerk is not indicative of misconduct by the district judge. See, e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-12-90015, July 11, 2012, at 3-4, citing Boudin, C.C.J., Amended Order, In Re: Judicial Misconduct Complaint No. 406, September 5, 2005, at 3. Accordingly, this allegation is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint Nos. 01-16-90034 and 01-16-90042 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A), 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

2/8/17

Date



Judge Torruella