

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90036, 01-16-90037, 01-16-90038,
01-16-90039, 01-16-90040 and 01-16-90041

BEFORE
Barron, Circuit Judge

ORDER

ENTERED: JANUARY 27, 2017

Complainant, a litigant, has filed complaints of misconduct, under 28 U.S.C. § 351(a), against a district judge and five appellate judges in the First Circuit. Complainant alleges judicial misconduct in connection with a civil proceeding and appeal. The misconduct complaints are baseless and not cognizable.

Complainant asserts that the district judge was biased against him because of his cause of action and, as a result, entered judgment in favor of the defendant. Specifically, complainant alleges that, by accepting facts asserted by the defendant in support of a motion for summary judgment, the district judge "wrongfully lied" and failed to comply with a local rule. Additionally, complainant alleges that the district judge violated various canons of the Code of Conduct for United States Judges (Code of Conduct), as well as numerous federal criminal statutes.

Complainant lodges the same allegations against the subject circuit judges. He further asserts that, by affirming the judgment of the district court, the appellate panel "wrongfully lied" and used abusive language in its written opinion. Further, complainant alleges that, by denying his petition for panel rehearing and rehearing en banc, the circuit judges ignored facts and "blindly" accepted the appellate panel's decision.

A review of the record of the case provides no factual support for complainant's conclusory allegations of judicial wrongdoing. As an initial matter, a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3. In the present matter, there is no evidence that any of the subject judges violated the Code of Conduct, let alone engaged in judicial misconduct.

Complainant offers no facts suggesting that the district judge exhibited bias or engaged in any other wrongdoing in connection with the proceeding. The record demonstrates that the district court heard from both parties in full before issuing a lengthy memorandum and order thoroughly reviewing complainant's substantive claims before granting the defendant's motion for summary judgment and dismissing the complaint. Furthermore, complainant's claim that the district judge violated a local rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct.¹

¹ Although not necessary to the disposition of the matter, the allegation that the district judge violated a local rule is unsupported by the record and was rejected by the Court of Appeals.

The appellate record is equally devoid of any facts suggesting judicial impropriety. With regard to the claim of abusive language in the per curiam opinion, the Court's wording is not remotely "egregious" or "hostile." See Rules of Judicial-Conduct, Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner . . ."). "[J]udges commonly express views based upon the record . . . in written opinions, and they are permitted 'leeway in the crafting of judicial opinions.'" Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 5, quoting In Re: Complaint of Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 24, 2011). The opinion at issue in this matter "do[es] not even approach 'the sort of deep-seated unequivocal antagonism that may constitute misconduct.'" In Re Judicial Misconduct Complaint No. 01-12-90015, supra, at 6, quoting In Re: Jane Doe, 640 F.3d at 863.

As there is no evidence of judicial bias or other wrongdoing by any of the subject judges, the misconduct complaints are 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).

Lacking any evidence of improper judicial motive, the misconduct complaints are simply another attempt to reassert complainant's dissatisfaction with the district and appellate courts' rulings in complainant's underlying case. This is not 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 . . .

without more, is merits-related."). Accordingly, the complaints are also 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).

For the reasons stated, Complaint Nos. 01-16-90036, 01-16-90037, 01-16-90038, 01-16-90039, 01-16-90040 and 01-16-90041 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

1/27/17
Date



Judge Barron