

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90001

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MAY 4, 2017

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges that the judge was biased and should have recused from his civil rights case. The misconduct complaint is baseless and not cognizable.

Complainant alleges that the judge was biased against him while presiding over the civil rights case he filed against a state agency and his former employer in connection with the denial of his application for unemployment benefits. Complainant contends that, because the judge had once patronized complainant's former employer, the judge lacked impartiality and was obligated to recuse from the proceeding. Further, complainant asserts that the judge wrongfully granted defendants' motions to dismiss and denied complainant's motions for the judge's recusal. Complainant also alleges that the judge

improperly delayed in issuing rulings in the case and committed perjury by denying an association with complainant's former employer.

Complainant's allegations are baseless. The reviewed record indicates that, after complainant filed amended claims in his civil case, the judge ordered complainant to show cause why the case should not be dismissed because complainant's claims were barred by *res judicata*. Complainant filed a response to the order to show cause and, with the court's approval, multiple amended complaints. Defendants subsequently filed motions to dismiss, which the judge allowed and dismissed the case as barred by *res judicata*, explaining that complainant's same claims had been fully and finally resolved in state court, and for failure to state a claim.

The reviewed record further indicates that complainant then requested that the judge recuse from the case based on the alleged association with complainant's former employer. The judge denied these motions on the ground that complainant failed to identify any valid grounds for recusal.

The reviewed record and the misconduct complaint are devoid of any information suggesting that the judge was biased or otherwise engaged in misconduct. Complainant provides, and the record reveals, no facts indicating that the judge harbored any illicit motivation in presiding over complainant's case. Complainant fails to provide any support for the allegation that the judge committed perjury. Further, the contention that the judge once patronized complainant's former employer, even if true, would not alone evidence a conflict of interest, improper judicial motive or warrant the judge's recusal.

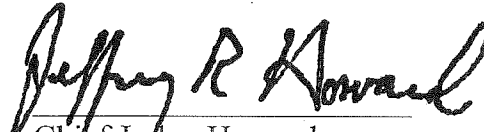
See, e.g., Code of Conduct for United States Judges (Code of Conduct), Canon 3(C)(1) (requiring judicial disqualification from any "proceeding in which the judge's impartiality might *reasonably* be questioned" (emphasis added)).¹ Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Where, as here, there is no evidence of bias or judicial animus, objections to the judge's rulings are "excluded as merits-related." 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 same is true for complainant's allegation that the judge improperly delayed in ruling on pending motions. See id. Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an 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"); 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 complaint is 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).

¹ A violation of the Code of Conduct for United States Judges (Code of Conduct) may inform consideration of a judicial misconduct complaint, but a violation of the Code of Conduct 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.

For the reasons stated, Complaint No. 01-17-90001 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

5/4/2017
Date


Chief Judge Howard