

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90007

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JANUARY 8, 2018

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge. Complainant alleges judicial misconduct in connection with two civil matters over which the judge presided. The misconduct complaint is baseless and not cognizable.

Complainant makes vague and incoherent allegations against the judge, including that the judge was biased against complainant because of unspecified familial relationships and treated complainant improperly during a scheduling conference in his first civil case. Complainant also alleges that the judge violated federal criminal statutes by failing to rule on complainant's motion for preliminary injunction in the first case, committed other federal crimes, and violated the Code of Conduct for United States

Judges (Code of Conduct) by denying complainant's motion for recusal in his second case.

The reviewed record, including the misconduct complaint and the dockets of the relevant proceedings, is devoid of any information suggesting that the judge was biased. In complainant's first case, alleging negligence by federal law enforcement agents, the district court held a scheduling conference during which the judge provided complainant an opportunity to explain the nature of his claims, inquired about complainant's past experience with the courts, and repeatedly informed complainant that he would need to file an opposition to any motion to dismiss within 14 days of service. Thereafter, complainant filed a motion for a preliminary injunction and the government moved to dismiss the proceeding. After complainant failed to oppose the government's motion to dismiss, the district court entered orders dismissing the case.

The record further indicates that complainant filed a second case, raising similar claims as the first case, that was assigned to the same judge. Complainant filed a motion seeking to recuse the judge, arguing that a conflict existed because the underlying complaint contained allegations concerning the judge's conduct and purported bias in complainant's earlier proceeding. The motion was denied.

The government moved to dismiss the second case and requested that the district court prohibit complainant from filing any future actions in the district court without prior court approval. Complainant did not object to this motion. In an order citing multiple precedents, the judge granted the government's motion and dismissed the second

case for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction. The order included a warning to complainant that future vexatious or frivolous filings could precipitate sanctions.

Complainant's conclusory allegations that the judge was biased (because of familial relationships or for any other reason) or engaged in other judicial wrongdoing in presiding over complainant's cases are baseless. Complainant provides, and the record reveals, no evidence to support the assertion that the judge harbored an improper motive in issuing any orders in the cases, including denying complainant's motion for recusal. See Code of Conduct, Canon 3(C)(1).¹

Moreover, review of the scheduling conference transcript demonstrates that the judge did not treat complainant improperly, let alone in a "demonstrably egregious and hostile manner" constituting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(1)(D). The transcript demonstrates that the judge listened to both sides describe the case, attempted to ascertain the procedural posture, advised complainant multiple times about his obligation to respond to any motion to dismiss, and did not use any hostile or inappropriate language. The judge's conduct "do[es] not even approach 'the sort of deep-seated unequivocal antagonism' that may constitute misconduct." See Lynch, C.C.J., Order, In re Judicial

¹A 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. In the present matter, there is no evidence that the judge had a conflict that would have warranted recusal under the Code of Conduct, let alone engaged in judicial misconduct.

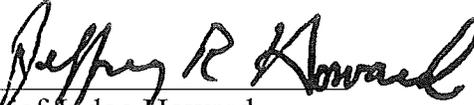
Misconduct Complaint No. 01-12-90015, July 11, 2012, at 6 (quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011)); see also Howard, C.C.J., Order, In Re Complaint No. 01-15-90012, October 7, 2015, at 4 ("A judge must exercise reasonable discretion over his or her courtroom environment." (quoting Boudin, C.C.J., Order, In Re Complaint No. 429, June 12, 2006, at 4)).

As there is no evidence of bias or other judicial impropriety, the misconduct 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 judge's orders denying complainant's motion for recusal and dismissing the proceedings are not cognizable. 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."). 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). Finally, because the judge's dismissal of complainant's first case without ruling on his motion for preliminary injunction is not indicative of misconduct, the claim 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 these reasons, Complaint No. 01-17-90007 is 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, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D), respectively.

1/8/2018

Date



Chief Judge Howard