

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-17-90019 and 01-17-90020

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 12, 2018

Complainant, a pro se criminal defendant, has filed a misconduct complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit and a judge of the U.S. Court of Appeals for the First Circuit. Complainant alleges judicial misconduct in connection with the district judge's denial of complainant's motion to seal his criminal record and the circuit judge's denial of complainant's motions to seal his appeal of the district judge's decision. The misconduct complaint is baseless and not cognizable.¹

Complainant alleges that the district judge was biased against complainant because he was proceeding pro se and that, as a result, the judge wrongfully denied complainant's

¹ This is complainant's second misconduct complaint. Complainant filed his first judicial misconduct complaint against the same district judge, alleging wrongdoing in connection with complainant's criminal case. See In Re: Judicial Misconduct Complaint No. 01-15-90026. That complaint was dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), and the Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Complaint No. 01-15-90026, March 11, 2016; Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-15-90026, September 1, 2016.

motion to seal his criminal record, "allow[ing]" information from this case to "post[] intentionally" on a state criminal database. Complainant further argues that the district court belatedly docketed his filings and that the district judge delayed issuing a decision on complainant's motion to seal. Complainant also avers that the judge did not review the relevant facts and that the court's order denying the motion to seal contained legal errors. Complainant requests that the district judge's decision be "removed and expunged from all records," and that the case be sealed.

Complainant further asserts that, after the district judge denied the motion to seal and complainant filed his first misconduct complaint, see nte. 1, *supra*, the district judge "harassed and stalked" complainant and improperly directed a U.S. Marshal to confront complainant as he filed an appeal of the district judge's order.

Complainant alleges that the circuit judge was biased against complainant as a pro se litigant, improperly denied complainant's motions to seal the appellate proceedings, and "intentionally . . . referenc[ed]" complainant's alias despite the potential exposure of the case on the Internet. Finally, complainant claims that the circuit judge and district judge colluded in order to protect each other, and he requests an investigation into purported improper communications between the judges during the pendency of the appeal.

As an initial matter, the judicial misconduct complaint process does not provide an avenue for obtaining an order in a case, including the removal or expungement of a judge's order or the sealing of a case. 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.

The misconduct complaint is baseless and not cognizable. The record indicates that complainant transferred to the United States to serve the remainder of his sentence, a three-year term of supervised release, following a conviction in another country. After complainant relocated to a district within the First Circuit, complainant moved to seal his criminal case, remove his conviction from a federal law enforcement database, and expunge his criminal record. The district judge denied the motion in a memorandum and order in which the court explained that the public availability of a criminal case is not a "punishment" implicating the Double Jeopardy Clause, the common law presumption of public access to court records outweighed the harm to complainant, the court had no authority to remove complainant's conviction from a federal law enforcement database, and the court lacked jurisdiction to expunge complainant's criminal record.

Complainant appealed the district court's decision, and later voluntarily dismissed the appeal after the circuit judge denied complainant's emergency motion to seal the case. Simultaneously, complainant petitioned the First Circuit Court of Appeals for a writ of mandamus and requested leave to proceed in the matter under a pseudonym; the Court of Appeals denied both requests. Complainant filed an emergency motion to seal the mandamus proceeding, which the circuit judge denied.

Complainant offers no new facts suggesting that the district judge exhibited bias in connection with the case -- a claim that was previously dismissed as baseless. See

Howard, C.C.J., Order, In Re: Complaint No. 01-15-90026, March 11, 2016, at 2-3; Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-15-90026, September 1, 2016, at 3; see also nte. 1, *supra*. Nor is there any support for complainant's allegations that the district judge harassed complainant, improperly directed security personnel to confront complainant, or intentionally provided information about complainant to the state criminal database.² Accordingly, these allegations are dismissed as baseless pursuant to pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Insofar as the judge is alleged to have communicated with the U.S. Marshals concerning complainant, this would not constitute misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A); see also Howard, C.C.J., Order, In Re: Complaint No. 01-15-90012, October 7, 2015, at 4 (citing Boudin, C.C.J., Order, In Re: Complaint No. 429, June 12, 2006, at 4) (explaining that a judge may exercise reasonable discretion over the courthouse environment to maintain security).

Likewise, complainant's claim of docketing delay, even if substantiated, would not be attributable to the presiding judge or indicative of misconduct. See, e.g., Howard, C.C.J., Order, In Re: Complaint Nos. 01-16-90026, 01-16-90032, November 14, 2016, at 9 (citing Lynch, C.C.J., Order, In Re: Complaint No. 01-13-90015, December 18, 2013,

² In his motion to seal, complainant indicates that his case already appeared in the state criminal database.

at 3-4). 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).

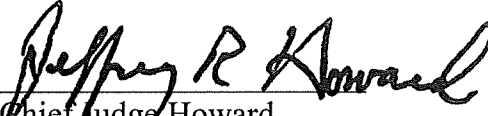
The remainder of complainant's allegations against the district judge, including the judge's purported delay in ruling on the motion to seal, are a reiterative attempt to misuse the misconduct process to challenge the substance of orders with which complainant disagrees. These claims were addressed and dismissed in complainant's previous misconduct complaint proceeding. See Howard, C.C.J., Order, In Re: Complaint No. 01-15-90026, at 3; Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-15-90026, at 3-4. Accordingly, these allegations 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).

Complainant provides no evidence that the circuit judge was biased in handling complainant's appeal or that the circuit judge conspired with the district judge. Where, as here, there is no evidence of improper judicial motive, the allegations of judicial bias and conspiracy amount to nothing more than an attempt to assert complainant's dissatisfaction with the court's orders. As such, they 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 . . . , without more, is merits-related."). Accordingly, the claims against the circuit judge are dismissed as baseless and not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B).

For these reasons, Complaint Nos. 01-17-90019 and 01-17-90020 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.

In addition, complainant should note that the filing of another repetitive or frivolous judicial misconduct complaint may precipitate issuance of an order to show cause. See Rules of Judicial-Conduct, Rule 10.

2/12/2018
Date


Chief Judge Howard