

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90022

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MARCH 23, 2018

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

Complainant alleges that the district judge unlawfully precluded complainant from completing his argument and wrongfully threatened to remove complainant from the courtroom during a hearing on pretrial motions and other matters. Complainant further alleges that the judge improperly denied complainant's numerous motions. Complainant contends that the judge is biased against complainant because he is proceeding pro se against the judge's advice, and that the judge "disparaged, ridiculed, or otherwise treated

[complainant] with hostility and subjected [him] to humiliating treatment" at the hearing. Complainant requests another hearing on the motions that the judge denied.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including a hearing or reconsideration of the court's orders. See 28 U.S.C. § 351, *et seq.*; see also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

The reviewed record, including the misconduct complaint, the criminal docket, and the transcripts of proceedings in the matter, is devoid of any information suggesting that the judge was biased or otherwise engaged in misconduct. According to the record, after complainant was indicted, he filed a series of pro se letters and motions, seeking, inter alia: leave to proceed pro se and for appointment of stand-by counsel; dismissal of the indictment; an order compelling production of discovery; and denial of the government's request to detain complainant.

The record further indicates that the court held a hearing to determine whether complainant was knowingly and intelligently waiving his right to counsel and heard arguments on complainant's pending motions. The transcript of the hearing demonstrates that the judge engaged in a lengthy colloquy with complainant and concluded that he may proceed pro se, before hearing arguments from complainant and the government on complainant's pending motions. The court then denied the motions and explained the basis for doing so. The transcript further indicates that complainant repeatedly

interrupted the court during the hearing, and that the judge repeatedly instructed complainant to stop doing so. When complainant claimed that he was being precluded from arguing his motions, the judge explained that the court had heard his argument and that complainant's right to speak during the hearing was not unlimited. The record shows that, after complainant again ignored the judge's warning to refrain from arguing further, the judge advised that complainant would be removed from the courtroom if he persisted in interrupting the judge. The complainant was not removed, and the hearing concluded after the judge addressed scheduling with the parties.

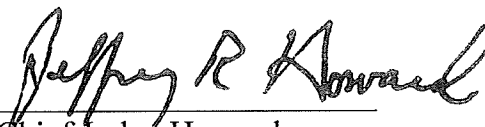
Complainant provides no facts indicating judicial bias or misconduct. The hearing transcript demonstrates that the judge listened to complainant and the government present arguments on the pending motions, and did not use any disparaging, hostile, or otherwise inappropriate language. The transcript further indicates that the judge advised complainant that he could be removed only after complainant repeatedly interrupted the proceeding and disregarded the court's directives. "A judge must exercise reasonable discretion over his or her courtroom environment," and there is no evidence that, in managing the courtroom during the hearing, the judge "acted for any inappropriate reason or improperly exercised . . . judgment." See Howard, C.C.J., Order, In Re Complaint No. 01-15-90012, October 7, 2015, at 4 (quoting Boudin, C.C.J., Order, In Re Complaint No. 429, June 12, 2006, at 4). Nor did the judge exhibit hostility or disparage complainant, let alone convey "'the sort of deep-seated unequivocal antagonism' that may constitute misconduct." See Lynch, C.C.J., Order, In Re Judicial 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)). As there is no evidence of bias or other judicial impropriety, the 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).

Insofar as the misconduct complaint is based exclusively on complainant's disagreement with the judge's rulings, including, but not limited to, the orders denying complainant's motions, the complaint is 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 complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For these reasons, Complaint No. 01-17-90022 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, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

3/23/2018
Date


Chief Judge Howard