

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90023

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: APRIL 18, 2018

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 in presiding over complainant's civil rights case. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that, while presiding over complainant's case, the judge was biased in favor of defense counsel with whom the judge purportedly has a personal relationship. Complainant alleges that the judge colluded with counsel when the court wrongfully vacated a default judgment against defendant *sua sponte*. Complainant further asserts that the judge improperly "removed" the assigned magistrate judge from presiding over complainant's case, without providing complainant prior notice, in order to ensure favorable rulings for defendant's counsel. Last, complainant alleges that the judge

improperly delayed in ruling on complainant's request for a hearing on a motion for recusal and wrongfully denied the motion. The reviewed record, including the misconduct complaint, the docket of the proceeding, and the court's orders, provides no support for complainant's conclusory allegations of bias, collusion, or other wrongdoing by the judge. The record indicates that complainant sued a number of parties for alleged civil rights violations. The case was assigned to a magistrate judge, and the court issued a consent form to proceed before a magistrate judge. A few months later, complainant filed a request for default judgment, asserting that one defendant failed to respond within the allotted time. The Clerk of Court entered a notice of default, and, as the parties had not consented to the assignment of the case to a magistrate judge, referred the case back to the district judge to proceed against the remaining defendants.

The record further indicates that the court vacated the default judgment *sua sponte* because complainant failed to serve defendant in compliance with the Federal Rules of Civil Procedure, and extended the time for complainant to complete service of process. Complainant filed an opposition in which she asserted that she had properly served defendant. Declining to reconsider its order vacating the default judgment, the court issued an order explaining the rules governing service of process, recommending that complainant use the United States Marshals Service to execute service, and extending again the time to complete service.

Thereafter, complainant requested that the previously assigned magistrate judge preside over her case and that the district judge recuse due to the judge's "friendship or

some type of prior relationship with" the defendant's attorney. The district judge denied the motion for recusal, explaining that the judge's professional acquaintance with the attorney (who is not counsel of record in complainant's case)¹ did not warrant recusal. With respect to complainant's request for the magistrate judge to preside over complainant's case, the judge directed complainant to the Notice and Procedures regarding Consent to Proceed before the Magistrate Judge that the court had issued earlier in the proceeding.² Complainant responded by filing a Refusal to Consent to Proceed before a U.S. Magistrate Judge.

The reviewed record provides no support for complainant's claims that the judge was biased in favor of the defendant, either because of a personal relationship with the defendant's attorney or for any other reason.³ To the contrary, the record suggests that the judge gave complainant multiple opportunities to cure procedural defects in the case, including repeatedly extending the time to complete service of process, explaining how to execute proper service, and directing complainant to the procedures for consenting to the assignment of a magistrate judge. Nor did the district judge "remove[]" the magistrate

¹ The referenced attorney does not appear on the docket as counsel of record. Complainant provided, with the misconduct complaint, purported copies of email exchanges between the attorney (on behalf of the defendant) and complainant suggesting that that the attorney represented defendant.

² The judge further noted that the court would defer to the magistrate judge's determination of whether any such consent would be sufficient to transfer jurisdiction of the case to the magistrate judge for all purposes.

³ Although not necessary to the disposition of the complaint, a judge's personal or professional acquaintance with defendant's counsel would not alone evidence a conflict of interest or warrant the judge's recusal. See, e.g., Code of Conduct for United States Judges (Code of Conduct), Canon 3(C)(1); and Compendium of Selected Opinions, § 3.6-8 (g-2) ("A judge need not recuse from cases handled by an attorney acquaintance . . ."). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Commentary on Rule 3 (explaining that 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).

judge from complainant's case; rather, complainant filed a Refusal to Consent to Proceed before a U.S. Magistrate Judge.

As there is no evidence of judicial bias, collusion, or other wrongdoing, the misconduct 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, complainant's objections to the court's rulings, including, but not limited to, the denial of complainant's motion for recusal and the order setting aside the default, 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.").

Finally, complainant did not request a hearing on the motion for recusal.⁴ Moreover, allegations of judicial delay, even if supported by the record, see nte. 4, *supra*, are not cognizable. See Rules of Judicial-Conduct, 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."). Accordingly, the

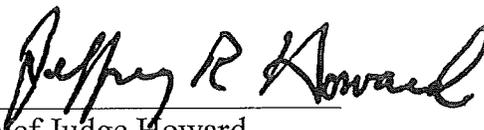
⁴ Complainant submits a document with the misconduct complaint that she contends demonstrates that she requested a hearing on the recusal motion; however, the document does not include such a request and was never filed in the case.

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 the reasons stated, Complaint No. 01-17-90023 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.

4/18/2018

Date



Chief Judge Howard