

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90024

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: APRIL 12, 2018

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

Complainant alleges that the judge wrongly denied complainant's motions; applied the incorrect rules of procedure; failed to provide orders bearing the judge's signature; and neglected to provide reasoning and supporting authority for the court's orders.¹ Specifically, complainant asserts that the judge erred in denying numerous uncontested motions, including, but not limited to, complainant's motion for default judgment.

¹ Complainant also files the complaint against the staff who executes the docket entries. The judicial misconduct complaint process does not offer an avenue for complaining about judicial staff. See 28 U.S.C. § 351, *et seq.* and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct). Nor is there any indication of clerical error or wrongdoing by staff in this matter. Further, an allegation that court staff mishandled the processing of the judge's orders, even if true, would not be attributable to the presiding judge or indicative of misconduct. See, e.g., Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint, No. 01-13-90015, December 18, 2013, at 3-4 (citing Boudin, C.C.J., Order, In Re Judicial Misconduct Complaint, No. 406, September 5, 2005, at 3).

Complainant further alleges that the judge ignored complainant's request for expedited proceedings pursuant to 28 U.S.C. § 1657. Complainant requests "exigent action" by the Judicial Council, pursuant to 28 U.S.C. § 332(d)(1), and reconsideration of his denied motions.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including reconsideration of the judge'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. Nor is there any basis for referring the matter to the Judicial Council where, as here, the complaint does not warrant the appointment of a special committee. See 28 U.S.C. § 351, *et seq.*; see also Rules of Judicial-Conduct, Rules 11(b), 11(f), and 17.

The reviewed record, including the misconduct complaint, the docket, and the court's orders, provides no information suggesting that the judge engaged in misconduct. The record indicates that complainant filed a civil complaint alleging various causes of action, and seeking declaratory judgment and money damages. Concurrent with the filing of his civil complaint, complainant filed an ex parte emergency motion to expedite proceedings pursuant to 28 U.S.C. § 1657(a). That motion, along with another motion to expedite that complainant filed after the misconduct complaint, remains pending.

Complainant filed an ex parte motion alleging that the defendant did not serve an answer within 21 days of service and requesting that the case proceed "in ex parte." Complainant refers to this filing as the "motion for default judgment" in his judicial misconduct complaint. The judge denied this motion without prejudice, noting that the request for relief was unclear, and has scheduled a hearing on the jurisdictional, procedural, and substantive aspects of the case.

Complainant fails to allege, let alone provide any evidence, that the judge was improperly motivated in denying complainant's motions. Complainant's objections to the court's orders, including the claim that the judge applied the wrong rules of procedure and failed to substantiate the court's rulings, 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."). The same is true for complainant's claim that the judge has not ruled on his motion to expedite proceedings. See id. Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling."); see also id. Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an action of the judge -- in other words, assigning a low priority to deciding the particular case."). Accordingly, the misconduct complaint is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

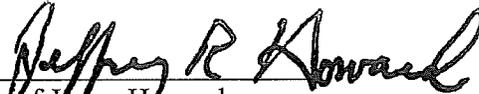
The entry of text-only docket orders (without a judge's handwritten signature) is also not indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rules of Judicial-Conduct, Rule 11(c)(1)(A).²

Finally, as complainant presents no evidence of judicial wrongdoing, 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).

² Although not necessary for the disposition of the complaint, this practice is consistent with the district court's procedures.

For these reasons, Complaint No. 01-17-90024 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.

4/12/2018
Date


Chief Judge Howard