

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90001

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 16, 2018

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

Complainant claims that the judge exhibited bias against complainant and in favor of the public officials against whom complainant filed suit by "ignoring" a number of motions, including, but not limited to, motions for recusal. Complainant alleges that the judge: incorrectly decided multiple motions to dismiss and motions to recuse in each of the cases; improperly rejected complainant's requests for a hearing on the motion to dismiss in the first case; engaged in "habitual[] delay[]" in complainant's allegedly "unrelated" cases in an effort to ensure that complainant's professional license would be suspended; failed to address motions to intervene; and improperly caused complainant's third case to be reassigned to the judge. Complainant

concludes that, by presiding over all of complainant's cases, the judge is "abusing [the] power of office [by] judicially stalk[ing] and harass[ing complainant]."

Complainant requests entry of an order disqualifying the judge from complainant's third case and from any future cases filed by complainant. Complainant further requests that the judge be sanctioned.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for affording complainant's requested relief, including reconsideration of a judge's denial of a motion to recuse or an order disqualifying a judge from a prospective case. 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 dockets of the relevant cases, and the court's orders, is devoid of information suggesting that the judge was biased or otherwise engaged in misconduct.

The record indicates that complainant filed a pro se civil lawsuit against state officials alleging violations of federal law, which was assigned to the subject judge. Complainant proceeded to file numerous motions seeking various relief, including: entries of default; imposition of sanctions and findings of contempt against defendants and their counsel; and an order requiring defendants to include affidavits with their pleadings. Over the next few months, the judge denied these motions. In the order denying the motion for sanctions, the judge warned complainant that lodging baseless inflammatory charges against opposing parties and counsel

could result in sanctions. The judge dismissed complainant's first action for failure to state a claim upon which relief can be granted.¹

According to the record, complainant filed a second civil case against members of a state professional licensing board, challenging and seeking to enjoin the suspension of complainant's license. Complainant moved to recuse the judge alleging that the judge was biased in favor of the defendants in this case and in the earlier litigation. Complainant filed an emergency motion for default, which the district judge promptly denied as moot citing an earlier extension of time that the court had given defendants to respond to the complaint. Over the next two months, complainant moved to expedite consideration of the motion for the judge's recusal, several non-parties filed motions to intervene, and defendants moved to dismiss the complaint. The judge denied the motion for recusal and, three days later, denied the motion to expedite as moot. Complainant promptly filed a second motion to disqualify the judge. The judge denied the second motion to disqualify, dismissed the action as barred by claim preclusion, and denied the motions to intervene as moot.

The record further indicates that complainant filed a third civil case against state officials in connection with the suspension of complainant's professional license. Defendants moved for dismissal. The case, which had been assigned initially to a different district judge, was then reassigned to the subject judge, pursuant to a local rule that provides for the reassignment of a case to a judge that handled a related matter. Complainant moved to vacate the reassignment and restore a motion hearing that had been scheduled before the initial district judge. The subject

¹ The First Circuit Court of Appeals summarily affirmed the dismissal of the case and rejection of complainant's request for sanctions, and found that the district court's warning to complainant did not indicate bias or otherwise merit the judge's recusal.

judge denied the motion to vacate citing the district's local rules.² The subject judge later dismissed the case as barred by claim preclusion, immunity, and the statutes of limitations, as well as insufficient under the Federal Rules of Civil Procedure.

The misconduct complaint and the record of the relevant proceedings provide no facts supporting the contention that the judge was biased or improperly motivated in presiding over complainant's cases. Complainant's principal claim -- that the judge exhibited bias by "ignoring" and improperly delaying in ruling on complainant's motions -- is dispelled by the record. The record demonstrates that the judge did not "ignore" any pleadings in complainant's three cases. Rather, the judge resolved all pending motions, and disposed of complainant's cases by means of detailed decisions providing the legal bases for the court's rulings.³ See supra, at 2-4. Nor does complainant offer any evidence in support of the allegation that the judge sought to ensure the suspension of complainant's professional license or protect government officials named as defendants, either by reassigning the third case or otherwise. The record demonstrates that the initial judge to whom the third case was assigned, transferred the case, with the subject judge's consent, pursuant to the district court's local rules. As there is no evidence of judicial bias, animus, or other misconduct, 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).

Where, as here, there is no evidence of improper judicial motive, complainant's claim that the judge improperly delayed in ruling on pending matters is not cognizable. See id. Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in

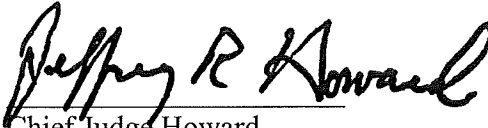
² Complainant filed a petition for a writ of mandamus with the Court of Appeals seeking to have the district court vacate its reassignment to the subject judge. The Court of Appeals denied the petition.

³ Complainant alleges that the judge never responded to his second motion for recusal in the second case, but, as noted supra, the judge disposed of this motion in the order dismissing that case. The motions to intervene, which complainant also contends the judge ignored, were likewise dismissed as moot when the court dismissed the case.

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.");⁴ 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."). The same is true for complainant's objections to the court's orders and decisions, including the dismissal of complainant's cases, the denial of complainant's requests for recusal, the reassignment of the case, and the determination not to hold hearings. These claims amount to nothing more than a challenge to the substance of orders with which complainant disagrees. 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).

For the reasons stated, Complaint No. 01-18-90001 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.

7/16/2018
Date


Chief Judge Howard

⁴ The record demonstrates that complainant's three cases were not "unrelated." Nor was there any "habitual delay." See supra, at 2-4.