

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-18-90002, 01-18-90003, 01-18-90004, 01-18-90005, 01-18-90006,
01-18-90007, AND 01-18-90008

BEFORE
Kayatta, Circuit Judge

ORDER

ENTERED: OCTOBER 26, 2018

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against five appellate judges and two district judges in the First Circuit. Complainant alleges judicial misconduct in connection with a civil rights case over which the district judges presided and its subsequent appeal in which all but one of the circuit judges participated.¹ The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the district judges should have recused from his civil rights case and that one of the appellate judges should have recused from the subsequent

¹ This is complainant's second misconduct complaint. In 2012, he filed a misconduct complaint alleging that one of the district judges named in the instant complaint engaged in judicial misconduct in presiding over the same civil rights case that is the subject of the present complaint. Then Chief Judge Lynch dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, January 31, 2013; and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, June 19, 2013.

appeal because the judges had a conflict of interest based on the President who nominated them. Complainant further alleges that the three judges concealed the conflicts of interest, and that, with the assistance of court staff, the district judges concealed evidence that they illegally intercepted and opened mail addressed to other district judges (neither of whom is the subject of this misconduct complaint).²

Complainant also alleges that the subject district judge to whom the case was originally assigned (first subject district judge) is racially biased and intentionally misrepresented complainant's legal arguments. Complainant requests relief from all orders entered by the subject district judges and this appellate judge.

Complainant further asserts that the five subject appellate judges improperly affirmed the district judges' decisions without reviewing the record. Complainant also alleges that three of the appellate judges denied complainant due process when they ordered the Clerk of Court not to accept any further motions in complainant's appeal.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining an order in 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 reviewed record, including the misconduct complaint, the docket of the proceedings, and the courts' orders, provides no support for complainant's conclusory

² The judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct).

allegations of bias, collusion, or other wrongdoing by any of the subject judges. The record indicates that complainant filed a civil rights case against state government officials. The following month, complainant requested the recusal of the first subject district judge, asserting a conflict of interest. The judge denied the recusal request and dismissed the case for failure to state a claim and for lack of standing. The Court of Appeals affirmed the order of dismissal. Over the next several months, complainant filed numerous letters, requests for relief, and a motion to vacate the Court's judgment. The Court of Appeals denied complainant's requests and ordered that the Clerk accept no further filings from complainant.

The record further indicates that, more than a year after the mandate had issued, complainant filed a motion in the district court, asking the court to reopen the case, to reconsider the order of dismissal, and requesting the first subject district judge's recusal. The judge denied the motion as untimely, repetitive of the original allegations, and because it failed to identify information that would warrant the requested relief. The judge also explained that complainant's redundant allegations of conflict of interest, which the court had previously addressed, did not provide a basis for reopening the case.

More than a year later, complainant sought to file an amended complaint in the closed case, adding the first subject district judge as a defendant. The first subject district judge recused, and the case was reassigned to the second subject district judge, who denied the motion and prohibited complainant from filing any additional documents in the case.

Complainant provides, and the record reveals, no information to support the conclusory allegation that any of the subject judges were biased or had a conflict of interest that warranted their recusal, either because of their Presidential nominations or for any other reason. See, e.g., Code of Conduct for United States Judges, Canon 3(C)(1) (providing grounds for questioning judge's impartiality).³ The reviewed record also provides no support for complainant's allegations that the subject district judges concealed evidence or "intercepted" complainant's mail.⁴

Further, complainant's conclusory allegations that the first subject district judge intentionally misrepresented complainant's legal arguments or that the subject appellate judges failed to adequately review the case or denied complainant due process in presiding over his appeal are equally unfounded. The record shows that the first subject district judge issued a memorandum and order outlining complainant's allegations, applying the law to the facts, and ultimately dismissing the case. Likewise, the appellate judges reviewed the record of the case and addressed complainant's pleadings.⁵ For example, the Court of Appeals explained that a number of complainant's filings would be treated as supplements to his brief and provided reasoning for its affirmance of the dismissal of complainant's case. Therefore, the complaint is dismissed as baseless,

³ See also Rules of Judicial-Conduct, 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).

⁴ The record indicates that the district court docketed a letter from complainant to the chief district judge, in which he alleged that the first subject district judge should have recused and that the subject appellate judges failed to adequately review his appeal. In an electronic order, the second subject district judge explained that the chief district judge does not have jurisdiction to review decisions of other judges. Complainant's letter to the chief district judge was appropriately referred to the presiding district judge in accordance with governing procedure.

⁵ According to the docket, one of the subject appellate judges did not serve on the panel assigned to this appeal or otherwise participate in the proceeding.

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 bias or judicial animus, complainant's objections to the courts' orders, including, but not limited to, the denial of complainant's motions for recusal and the order precluding complainant from making additional filings in his appeal, 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."). 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 the reasons stated, Complaint Nos. 01-18-90002, 01-18-90003, 01-18-90004, 01-18-90005, 01-18-90006, 01-18-90007, and 01-18-90008 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.

10/26/2018
Date



Judge Klayatta