

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90012

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JANUARY 8, 2019

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 in connection with complainant's employment discrimination case over which the judge presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.

Complainant alleges that, while presiding over complainant's case, the judge was biased against complainant, based on complainant's race and pro se status, and favored defendant (complainant's former employer) and defense counsel. Complainant alleges that the judge improperly denied complainant's motion to remand the case to state court without reviewing the pleadings or holding a hearing, and objects to the judge's setting a scheduling conference before ruling on the motion to remand. Complainant further asserts that, in the order denying remand, the judge cited inapplicable law, used

"condescending" language, and omitted the complete date that complainant filed the underlying state court case. Complainant also alleges that the judge and court staff did not respond to complainant's communications. Last, complainant alleges that the court is "sabotag[ing]" complainant's efforts to settle the employment discrimination case by publicly posting the case on the internet. Complainant requests that the case be remanded to state court, as well as additional unspecified relief.

As an initial matter, the judicial misconduct procedure does not provide an avenue for filing a complaint against judiciary staff or for obtaining relief in a case, including the issuance of an order for remand. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct).

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 or other wrongdoing. The record indicates that complainant filed a state court employment discrimination case against a former employer, which defendant removed to federal court. After the court set a scheduling conference, complainant filed a motion for remand. Complainant also sent the judge's courtroom deputy a letter, which the court docketed, stating that complainant had been unable to reach the courtroom deputy by phone and requesting that the scheduling conference be continued until after a hearing on the motion for remand. The following day, the court canceled the scheduling conference, and defendant subsequently filed an opposition to the motion for remand.

According to the record, the judge issued an order denying the motion for remand and explaining that removal of complainant's state court case (identified correctly by the month and year in which it was filed) was appropriate because federal claims were central to the case. The same day, the court rescheduled the scheduling conference. Complainant filed a motion to continue the conference, which the court granted.

The record further indicates that complainant appealed the order denying remand and filed a letter requesting removal of complainant's personal information from the internet. The judge denied the request, explaining that federal court filings are presumptively public. Subsequently, complainant filed a notice to dismiss the federal claims and remand the case to state court, which the judge construed as a motion to amend and remand, and granted.¹

The record demonstrates that complainant filed a notice again requesting redaction of complainant's personal information from the public docket and removal of the case from the internet, as well as a motion to seal the case. The judge denied the motion in a detailed order, explaining that complainant did not follow local procedures for sealing documents or provide a compelling reason to seal the case.

The reviewed record provides no support for complainant's claims that the judge was biased or improperly motivated, failed to review pleadings, or disregarded communication from complainant while presiding over the case. To the contrary, the

¹ The Court of Appeals dismissed complainant's appeal for failure to show cause why the appeal should not be dismissed for lack of jurisdiction.

record indicates that the judge issued multiple rulings in complainant's favor (including canceling the scheduling conference and granting complainant's motions to continue and to amend and remand) and that the court's orders reflect both attention to the pleadings and provide the reasons for the judge's rulings (including the detailed order denying complainant's motion to seal). Further, the docket indicates that the judge promptly responded to complainant's letter requesting continuance of the scheduling conference by canceling the conference.

Nor does the order denying complainant's motion for remand contain "condescending" or otherwise improper language. See Rules of Judicial-Conduct, Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants [or] attorneys . . . in a demonstrably egregious and hostile manner . . ."). In denying the motion, the judge did not use hostile, let alone egregious, language; the order objectively sets forth the arguments raised by complainant and the judge's legal bases for rejecting them. The order "do[es] not even approach '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 24, 2011)). Accordingly, 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).

As there is no evidence of bias or improper judicial motive, complainant's disagreement with the court's rulings -- including setting the scheduling conference,² denying the motions for remand and redaction, declining to conduct a hearing, as well as complainant's objections to the cited law and date in the order denying remand -- are not cognizable. 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 . . . 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).

Finally, while complainant provides no evidence that court staff were unresponsive to complainant's communications or acted improperly, their conduct would not, in any event, be attributable to the judge. See, e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at 7. Accordingly, this claim is not indicative of misconduct and is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

² Contrary to complainant's allegations, complainant had not yet filed the motion for remand when the court first set the scheduling conference. After receiving the motion for remand and complainant's correspondence, the court canceled the scheduling conference. See supra p. 2.

For the reasons stated, Complaint No. 01-18-90012 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.

January 8, 2019
Date


Chief Judge Howard