

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90016

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 19, 2019

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 his civil case over which the judge presided. The misconduct complaint is baseless and is not cognizable.

Read generously, the complaint alleges that the judge is biased against litigants from the city where complainant resided when he filed his civil case.¹ Complainant asserts that the judge erroneously presumes that residents of that city are uneducated. Complainant also alleges that the judge improperly denied complainant's multiple motions for default judgment because the judge failed to read the content of the motions,

¹ Complainant includes allegations of wrongdoing by the district court clerk's office staff. The judicial misconduct procedure does not provide 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), Rule 4.

instead relying exclusively on their titles. Finally, complainant alleges that the judge allowed counsel for two of the defendants to file a motion without the certification required by local rule.²

The reviewed record, including the misconduct complaint, the docket of the proceeding, and the court's orders, provides no evidence for complainant's allegations of bias or other judicial misconduct. The record indicates that complainant filed a civil suit against city employees (city defendants) and state court officials (state defendants). The judge granted complainant's motions for leave to file electronically and for an extension of time to serve the summonses. Complainant then filed numerous motions for default against the city defendants in just over a month.³ The judge denied each default motion because complainant had failed to effectuate service of the summonses on the city defendants. The city defendants subsequently waived service of process. On the same day, complainant filed a motion to disqualify the judge, which the judge denied.

The record also indicates that the state defendants filed a motion to dismiss for lack of jurisdiction and failure to state a claim. The court scheduled a hearing on the motion and later rescheduled it at complainant's request. After the city defendants also filed a motion to dismiss for failure to state a claim, the court scheduled the hearing on

² Complainant includes an apparent citation from the Rules of Judicial-Conduct -- "having improper discussions with parties or counsel for one side in a case" -- but does not allege that the judge in his case engaged in improper ex-parte communication. See Rules of Judicial-Conduct, Rule 3(h)(1)(C) ("Cognizable misconduct . . . includes . . . having improper discussions with parties or counsel for one side in a case"). Accordingly, complainant's apparent reference to the rule does not require further discussion.

³ Complainant also filed numerous memoranda, addenda, and affidavits in support of various pleadings throughout his case, including but not limited to memoranda in support of his multiple motions for default, and memoranda and affidavits in support of a subsequently filed motion to disqualify the judge. See *infra* p.2.

the same date as the state defendants' motion. At the hearing, complainant requested a further continuance for additional time to retain counsel. The judge granted complainant's continuance request, but noted that the court would rule on the papers if counsel did not enter an appearance on complainant's behalf within 30 days. As no appearance was filed, the judge granted defendants' motions to dismiss. The court found that the claims against the state defendants were barred, in part, by sovereign and judicial immunity, and that complainant failed to make any colorable claim against the city defendants.

Complainant's conclusory allegations that the judge was biased against him, based on his city of residence or for any other reason, and that the judge improperly neglected to consider the substance of complainant's pleadings, are not supported by any evidence. On the contrary, the court repeatedly explained that complainant's motions for default were denied due to improper service and gave complainant multiple opportunities to cure the deficiency.⁴ The judge also scheduled a hearing at which complainant could be heard; granted complainant's request for a continuance; and, at the hearing, gave complainant an additional month to retain counsel. As complainant's allegations are presented without any basis in fact, the misconduct complaint is dismissed, pursuant to

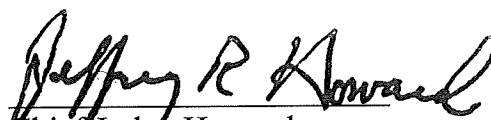
⁴ Complainant asserts in the misconduct complaint that he effected proper service of the summonses by mailing them by certified mail. Although not necessary for disposition of the misconduct complaint, such service would not comply with the governing rule. See FED. R. CIV. P. 4(e) (providing that service should be in accordance with state law or by "(A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.").

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).

Because there is no evidence of bias or improper judicial motive, complainant's objections to the judge's rulings -- including denying the motions for default, allowing defendants' counsel to file a motion without the referenced certification, and dismissing the case -- 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."). See also Barron, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90036 - 01-16-90041, January 27, 2017, at 2 ("[C]omplainant's claim that the district judge violated a local rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct."). 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. 01-18-90016 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).

February 19, 2019
Date


Chief Judge Howard