

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-18-90018, 01-18-90019, and 01-18-90026

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JUNE 4, 2019

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a), against two (2) district judges and a magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with five (5) civil cases over which the judges presided. The misconduct complaint is frivolous and is not cognizable.

Complainant makes a series of spurious and unsupported allegations against the judges and magistrate judge in connection with their handling and dismissal of complainant's multiple civil cases. These claims include: unethical personal involvement in his cases (the first district judge and the magistrate judge); conspiracy to accept bribes (the first district judge); denial of the right to a fair trial (the first district judge) and other improper rulings (the first district judge and the magistrate judge); causing harm to employees (the second district judge); and improper delay in granting complainant a hearing (all three (3) judges). Complainant adds that all three (3) judges are not legally "qualified" to serve as judges and requests miscellaneous relief, including: the refiling of

one (1) of his cases; the addition of defendants to another of his cases; the removal of the first district judge from his cases; and the assignment of only "qualified" judges to complainant's future cases. Finally, complainant asks that he be allowed to issue decisions in each of his district court cases.¹

As an initial matter, the judicial misconduct process does not provide an avenue for obtaining relief in a case, including the removal or assignment of a judge or the other relief that complainant requests. 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 provides no evidence for complainant's conclusory allegations of conspiracy, bribery, delay, or other judicial misconduct.

A. The First District Judge

The first district judge presided over two (2) of complainant's five (5) cases. In the first case (alleging defamation, threats, and conspiracy by a telecommunications company), the judge scheduled a hearing on defendant's motion to dismiss and allowed complainant additional time to file an objection and to appear by telephone if desired. At the hearing, the judge heard arguments from both parties, answered complainant's questions, explained legal processes to complainant, and summarized defense counsel's arguments for complainant. Thereafter, the judge granted defendant's motion to dismiss,

¹ Complainant includes allegations against others allegedly involved in his cases, including law enforcement, court staff, and jurors. As the judicial misconduct process applies only to complaints against federal judges, these claims are not addressed. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 1(b).

to which complainant had not filed a written objection, and denied complainant's subsequent motions for various relief, including the judge's recusal.

The first district judge also presided over complainant's fourth proceeding against purported employees of a media outlet. In that matter, the judge repeatedly notified complainant that the case would be dismissed without prejudice if service was not completed. The court ultimately dismissed the case, without ruling on complainant's multiple motions for recusal, after complainant failed to provide proof of service.

Complainant's allegations that the judge conspired to accept a bribe, was improperly motivated or involved in complainant's cases, denied complainant his right to a trial, or engaged in other wrongdoing are presented without any factual support. On the contrary, the record demonstrates that the judge issued orders that carefully outlined legal procedures and standards, and otherwise demonstrated leniency towards complainant. The transcript of the motion to dismiss hearing in complainant's first case similarly indicates that the judge treated complainant with respect, listened patiently to complainant, and explained legal processes to him. Accordingly, these claims against the first district judge are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

B. The Magistrate Judge

The magistrate judge issued rulings in four (4) of complainant's cases, including denying complainant's motions for a hearing without prejudice in complainant's first and second cases and denying complainant's motions to transfer in his third and fourth proceedings. The magistrate judge also issued a detailed recommendation that the second

case (alleging wrongdoing by complainant's former union) be dismissed, which the presiding judge (who is not a subject of the misconduct complaint) adopted.

Complainant provides and the record contains no support for the allegation that the magistrate judge was improperly motivated or inappropriately invested in complainant's cases. Accordingly, these claims against the magistrate judge are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

C. The Second District Judge

The second district judge presided over complainant's fifth case alleging wrongdoing by the district court that dismissed his first four (4) cases. The second district judge, assigned from another district to preside over this proceeding, dismissed the case with prejudice after giving complainant the opportunity to cure the complaint's deficiencies.

Complainant's allegation that the second district judge caused harm to employees is "facially incredible" and presented without any evidence. See Rules of Judicial-Conduct, Rule 11(c)(1)(C) Commentary ("Dismissal of a complaint as 'frivolous'" is appropriate "when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted . . ."). Accordingly, this claim against the second district judge is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

D. Remaining Allegations

Complainant's allegations that all three (3) subject judges are not legally qualified to serve as judges are also "facially incredible" and presented without any supporting

evidence. As such, they are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Because there is no evidence of improper judicial motive, complainant's challenges to the first district judge's and the magistrate judge's rulings, including but not limited to those dismissing complainant's cases and denying complainant's motions for recusal, are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."). The same holds true for complainant's allegations of improper delay. See Rules of Judicial-Conduct, Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in 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."). 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. 01-18-90018, 01-18-90019, and 01-18-90026 are 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)(C).

June 4, 2019
Date


Chief Judge Howard