

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-18-90020 - 01-18-90023

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 27, 2018

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against three circuit judges of the U.S. Court of Appeals for the First Circuit, and against a district judge. Complainant alleges judicial misconduct in connection with the appeal of his discrimination case over which the appellate judges preside. Complainant also alleges judicial misconduct in connection with the proceeding over which the district judge presides. Complainant is not a party to this case. The misconduct complaint is not cognizable, is not indicative of misconduct, and is baseless.¹

Complainant alleges that the appellate judges treated complainant in a "demonstrably egregious and hostile manner" by staying complainant's appeal pursuant to the automatic stay provision of a statute. Complainant further alleges that the appellate

¹ Complainant also filed a misconduct complaint alleging that a district judge and a magistrate judge engaged in judicial misconduct in presiding over another of complainant's civil cases. This misconduct complaint is under review.

judges' enforcement of the stay and resulting delay in ruling on the merits of complainant's appeal violated the Federal Rules of Appellate Procedure and the First Circuit Local Rules. Complainant alleges that the district judge has engaged in misconduct by "allow[ing]" the automatic stay in the district court case, without considering the impact on civil litigants who have pending discrimination cases.

The reviewed record, including the misconduct complaint, the relevant dockets, and the Court of Appeals' orders, provides no support for complainant's conclusory allegations of wrongdoing by any of the subject judges. After complainant appealed the dismissal of his employment discrimination case, the appellate court issued an order directing the parties to show cause whether the appeal was subject to an automatic stay arising from the litigation pending with the subject district judge.² After the parties filed their responses, one of the appellate judges entered an order staying the appeal, in light of the statute's automatic stay provision, and directing the parties to file status reports every 90 days. Complainant filed a response to the order enforcing the stay, which the appellate judges treated as a motion for reconsideration of the stay and denied.

Complainant's objections to the Court of Appeals' orders enforcing the stay of his proceeding, including the claims that the appellate judges violated the governing rules of procedure and delayed in ruling on the merits of his appeal, are not cognizable. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an

² The district court case involves a statute that provides for an automatic stay of any existing action or claim against the defendants. Complainant did not seek relief from the stay.

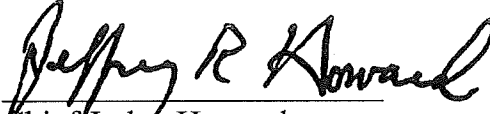
allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related."). See also id. Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling."). Accordingly, the complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also id. Rule 11(c)(1)(B).

Further, as the stay of pending claims against the defendants, including complainant's appeal, took effect automatically, see nte. 2, supra, its application to complainant's case is not indicative of judicial misconduct by the district judge. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Finally, as complainant presents no evidence that any of the judges treated complainant in an egregious and hostile manner or engaged in any other judicial wrongdoing, 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).

For the reasons stated, Complaint Nos. 01-18-90020, 01-18-90021, 01-18-90022, and 01-18-90023 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.

11/27/2018
Date


Chief Judge Howard