

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-18-90032 and 01-19-90010

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 12, 2019

Complainant has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a magistrate judge and a district judge in the First Circuit in connection with complainant's attorney disciplinary proceeding over which the subject judges presided. The misconduct complaint is baseless, is not indicative of misconduct, and is not cognizable.

Complainant alleges that, in presiding over the evidentiary hearing held in complainant's attorney disciplinary proceeding, the magistrate judge exhibited bias by: predetermining that complainant had engaged in unethical conduct; reluctantly allowing complainant to offer evidence; concluding the hearing before complainant had the opportunity to present all of the evidence; and denying complainant's oral request to file additional evidence. Complainant further alleges that, at the hearing, the magistrate

judge demonstrated "ignorance" of relevant law, "disgust" with complainant, and fatigue. Complainant also seems to object to the timing of the magistrate judge's order requesting a transcript of the hearing.

Complainant alleges that in issuing a "conclusory" order suspending complainant from practicing law before the district court, the district judge was biased and retaliated against complainant for filing the misconduct complaint against the magistrate judge. Because of purported bias by the judges of the district court, complainant requests transfer of the case to another district court.

As an initial matter, the judicial misconduct procedure does not provide an avenue for transferring a case to another district. 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 relevant proceeding, the hearing transcript, and the court's order of reciprocal discipline, is devoid of any information suggesting that the magistrate judge or the district judge was improperly motivated or otherwise engaged in misconduct in presiding over complainant's disciplinary proceeding.

The record indicates that the district court received notification from the local court that complainant had been suspended indefinitely from the practice of law in that jurisdiction and, in accordance with the governing local rule, issued an order to show cause why complainant should not be reciprocally suspended in the district court.

Complainant filed a response to the order to show cause in which he argued that he had been wrongfully suspended and requested a hearing.

The record further shows that the district judge referred the matter to the magistrate judge who held a multi-hour evidentiary hearing at which complainant appeared pro se and testified under oath regarding the events which formed the basis for his suspension. According to the hearing transcript, complainant asked to continue the hearing on another day, but agreed when the magistrate judge asked whether complainant could discuss his remaining evidence in additional time during the present hearing. Complainant also sought to submit additional documents electronically but withdrew the request after the magistrate suggested that the documents were unnecessary. The magistrate judge requested that complainant provide a federal court opinion on which complainant relied extensively during the hearing.

According to the docket, the magistrate judge ordered a transcript of the proceedings, and, shortly thereafter, complainant filed an informative motion in which he voiced appreciation for the magistrate judge's patience, respect, and impartiality during the hearing, but reiterated that the suspension was improper. After complainant filed a second informative motion arguing the merits of the case, the district judge entered an order indicating that, based on a review of the district court record and that of the jurisdiction that issued the underlying order of suspension, reciprocal discipline was warranted and suspending complainant from the practice of law in the district court.

Contrary to complainant's allegations that the magistrate judge predetermined the outcome of the disciplinary proceeding, failed to allow complainant to submit evidence, or exhibited improper behavior (including disgust or fatigue), the hearing transcript demonstrates that the magistrate judge permitted complainant, over the course of several hours, a nearly unrestricted opportunity to present his argument. The magistrate judge exhibited no improper behavior. Nor does the magistrate judge's request that complainant provide an opinion on which he relied suggest "ignorance" or misconduct on the part of the magistrate judge.

To the extent that the magistrate judge expressed disagreement with complainant's view of the facts that prompted the original order of suspension, such statements, absent "extraordinary circumstances," would not demonstrate bias. See Boudin, C.C.J., Order, In re Judicial Misconduct Complaint No. 444, January 23, 2007, at pp. 3-4, citing In re Marisol Martinez-Catala, 129 F.3d 213 (1st Cir. 1997) ("It is well settled that judges are entitled to form views about the merits, and to express them, during the course of the case so long as the judgements rest on the evidence and arguments in the proceeding itself Leaving aside extraordinary circumstances, the expression of views by the judge on the merits or application of such views through questioning . . . [does not] constitute bias.").¹ Accordingly, the claims against the magistrate judge are dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i), and as baseless, pursuant to 28

¹ Although not necessary to the disposition of the misconduct complaint, complainant's comments commending the magistrate judge's impartiality undermine the credibility of complainant's current claims. See infra at p. 3.

U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A) and Rule 11(c)(1)(D), respectively.

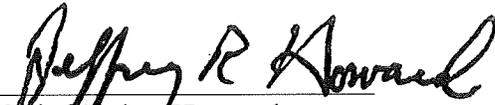
Likewise, there is no evidence that the district judge was biased or improperly motivated in ordering complainant's suspension. To the contrary, the district judge issued a reasoned analysis, based on the record, for ordering reciprocal discipline. Nor does the substance of the court's order suggest a retaliatory motive. Accordingly, the claims against the district judge are dismissed as baseless. See 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 improper judicial motive, complainant's objections to the court's rulings -- including the magistrate judge's handling of the hearing and order requesting a transcript, and the district judge's order of suspension -- are not cognizable. These claims amount to nothing more than a challenge to the substance of decisions with which complainant disagrees. 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 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."). 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. 01-18-90032 and 01-19-90010 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.

July 12, 2019
Date


Chief Judge Howard