

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90033

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 12, 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 an employment discrimination case over which the judge presided. The misconduct complaint is baseless, is not indicative of misconduct, and is not cognizable.

Complainant alleges that the judge exhibited bias against complainant by: failing to issue a protective order; improperly approving defendants' case management proposal; declining to appoint counsel for or give legal advice to complainant; denying complainant equal access to the court's electronic filing system; and consistently denying complainant's motions but allowing defendants' motions. Complainant also alleges that the judge has a conflict of interest because the judge improperly dismissed an unspecified employment discrimination case brought by a female pro se litigant. Complainant adds that she has not received any court documents since she relocated to a new address, and

that the court has improperly held her and defendants to the same standards, despite her status as a crime victim, and denied her right to a fair trial.¹

Complainant requests that the judge recuse from her case. She also requests court protection against defendants and that the court grant her motion for a continuance, compel complete responses to her interrogatories, and provide her access to the court's electronic filing system.

As an initial matter, the judicial misconduct process does not provide an avenue for obtaining complainant's requested relief, including recusal of a judge and orders in a case. See 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 allegations of bias, conflict of interest, or other judicial misconduct. The record indicates that complainant sued her former employer for discrimination. Another district judge, initially assigned to the case, denied complainant's motion for appointment of counsel without prejudice. The court reassigned the case to the subject judge, who, over complainant's objection, adopted defendants' proposed case management schedule and explained that complainant could file a motion to modify the schedule.

The record further shows that complainant filed two motions for continuances; the judge allowed the first and denied the second. Complainant also filed letters requesting

¹ Complainant also makes various allegations against defendants and their counsel, and law enforcement. 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).

that the court order defendants to stop threatening complainant, to which the court did not respond. When complainant objected to defendants' discovery requests in their entirety, defendants moved to compel discovery. The judge allowed defendants' motion to compel in part, but authorized complainant to refrain from responding to some of defendants' requests for production.

The record reflects that complainant subsequently informed the court that she had not received certain court notices and provided the court with a new mailing address. At her request, the court resent the documents by mail and email. The court subsequently received proof from the postal service that mail sent to complainant's new address had been received.

The record further shows that the judge subsequently denied defendants' motion for an extension of certain deadlines and warned that the court would consider sanctions for non-compliance. The judge held a hearing on defendants' motions to dismiss and for summary judgment, at which the judge granted complainant additional time to retain counsel and provide discovery. Thereafter, complainant filed two further motions, including a motion for the judge's recusal, both of which the judge denied. After complainant failed to retain counsel and submit discovery, the judge dismissed the case with prejudice.²

The reviewed record lends no support to complainant's claims of judicial bias, conflict of interest, or other wrongdoing. The record demonstrates that the judge

² Complainant's appeal of the dismissal is pending.

considered the substance of complainant's submissions, ruled in complainant's favor on a number of occasions, and gave complainant the opportunity to request modifications to the case management schedule. Further, complainant's claim that the judge dismissed an unrelated case does not suggest a conflict of interest, require the judge's disqualification, or evidence misconduct. See, e.g., Code of Conduct for United States Judges, Canon 3(C)(1).

Finally, the record indicates that complainant did, upon request, receive mailings from the court at her new address. Regardless, any such clerical error would not be attributable to the judge. See, e.g., Lynch, C.C.J., Order, *In Re Judicial Misconduct Complaint No. 01-13-90015*, December 18, 2013, at 3-4 (citing Boudin, C.C.J., Amended Order, *In Re Judicial Misconduct Complaint No. 406*, September 5, 2005, at 3).

Accordingly, the misconduct complaint is dismissed as not indicative of misconduct and as baseless. See 28 U.S.C. § 352(b)(1)(A)(i) and (iii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(A) and (D).

Because there is no evidence of improper judicial motive, complainant's challenges to the court's orders - including, but not limited to, the granting of defendants' motion to dismiss (without ruling on the protective order requests), and denials of complainant's requests for access to the court's electronic filing system³ and court-appointed counsel⁴ - are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1)

³ Although not necessary for resolution of the complaint, the governing local rules and administrative procedures provide that a pro se litigant's access to electronic filing is subject to approval by the presiding judicial officer.

⁴ The first district judge assigned to complainant's case, not the subject judge, denied complainant's motion for counsel without prejudice.

("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."). 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 No. 01-18-90033 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).

July 12, 2019
Date


Chief Judge Howard