

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-18-90035

---

BEFORE  
Howard, Chief Circuit Judge

---

ORDER

ENTERED: SEPTEMBER 17, 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 three civil cases over which the judge has presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.

Complainant alleges that the judge is biased against complainant because of his pro se status and his race. Complainant contends that the judge failed to uphold the law by, among other things, allowing defendants in complainant's cases to violate procedural rules, extending defendants' filing deadlines, and denying a number of complainant's motions, including, but not limited to, motions for recusal. Complainant asserts that, in reliance on inapplicable case law and inaccurate facts, the judge improperly dismissed two of his cases. Complainant further objects that the judge was allowed to choose the magistrate judge who would be assigned to the case despite the judge's alleged bias. Complainant alleges that the judge has violated the Code of Conduct for United States

Judges (Code of Conduct) and the oath of office.<sup>1</sup> Finally, complainant asserts that the court delayed in ruling on a number of his motions and docketing a number of his pleadings, and objects to the date the pleadings were docketed.<sup>2</sup>

Complainant requests the judge's recusal and miscellaneous relief in his open case, including denial of one defendant's motion to dismiss and an order for damages and attorney's fees.

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, including the misconduct complaint and the dockets of the proceedings, provides no evidence for complainant's allegations of bias or other judicial misconduct. The record indicates that, in complainant's first case, complainant sued state court officials and an attorney in connection with a state court proceeding. Defendants moved to dismiss. Complainant filed a motion for default judgment because defendants had not filed answers, which the judge denied, explaining that defendants were not required to answer the complaint pending a decision on the motions to dismiss. The

---

<sup>1</sup> While complainant also alleges that the judge violated a state code of judicial conduct, only the Code of Conduct for United States Judges (Code of Conduct) is applicable to the federal judiciary.

<sup>2</sup> Complainant also levies various allegations against district court staff and a state court judge, among others. 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).

judge adopted the presiding magistrate judge's recommendation to dismiss the case as barred by, among other things, judicial immunity and failure to state a claim.

The record further shows that, shortly before his first case was dismissed, complainant filed a second case against the same parties seeking to enjoin the presiding judge in his state court proceeding from violating procedural rules. The subject judge denied complainant's requests, explaining, in part, that governing case law prevented the court from interfering with ongoing state judicial proceedings and informing complainant that review of the state court's orders is available only within the state judicial system. The judge dismissed the case as barred by *res judicata* and, in the alternative, for failure to state a claim upon which relief could be granted.

According to the record, complainant subsequently sued his former employer and others for alleged discrimination. The subject judge was assigned to the case, and a magistrate judge was also assigned in accordance with local rules. A number of defendants moved to dismiss, and complainant filed numerous motions for default judgment. The judge denied all but one of complainant's motions for default judgment, agreeing with complainant that one defendant had failed to respond to the complaint within the deadline. After a hearing, the judge set aside the default judgment against the defendant and allowed him to file a motion to dismiss, but issued a monetary sanction against him.

The record demonstrates that complainant filed numerous motions for the judge's recusal. After a hearing, the judge denied complainant's recusal requests in orders explaining that complainant's motions failed to demonstrate that recusal was warranted.

The record also indicates that the judge allowed complainant's multiple requests to file supplemental complaints and denied defendants' opposing motions. Various defendants filed further motions to dismiss, which are scheduled for a hearing before a magistrate judge.

Complainant's conclusory allegations that the judge was biased or improperly motivated against complainant, violated procedural rules or the Code of Conduct, or engaged in other misconduct, including choosing the magistrate judge assigned to the case, are baseless.<sup>3</sup> On the contrary, the record demonstrates that the judge held multiple hearings, issued reasoned rulings on complainant's numerous motions, and granted complainant's requests on multiple occasions, including repeatedly allowing complainant to supplement his complaint and sanctioning a defendant for failure to comply with deadlines. As the complaint and the record are devoid of any facts to support the allegations that the judge violated the Code of Conduct, allowed defendants to violate

---

<sup>3</sup> While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364)," "[n]ot every violation of the Code should lead to disciplinary action." Code of Conduct, Canon 1 Commentary. See also Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code[ of Conduct]'s Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by [28 U.S.C. § 351, et seq.] and these Rules [of Judicial-Conduct]"). Likewise, "complainant's claim that the district judge violated a local rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct." Barron, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90036 - 01-16-90041, January 27, 2017, at 2. As for complainant's assertion that the subject judge improperly chose the presiding magistrate judge, the record reflects that the magistrate judge was assigned in accordance with local rules.

procedural rules, or was racially or otherwise improperly motivated in handling complainant's cases, the misconduct complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also 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, but not limited to, those extending defendants' filing deadlines, denying motions for recusal, setting aside an entry of default against a defendant and allowing him to file a motion to dismiss, and dismissing complainant's first two cases -- 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 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 claim that the judge delayed in ruling on some of complainant's motions is likewise not cognizable. See id., 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).

Finally, while the record does not indicate any impropriety in the docketing of complainant's pleadings, the conduct of court staff in exercising their administrative

duties would not be attributable to the judge. See 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. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-18-90035 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).

September 17, 2019  
Date

  
Chief Judge Howard