

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90001, 01-19-90002, 01-19-90003, AND 01-19-90004

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 29, 2019

Complainant, an incarcerated pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge and three circuit judges in the First Circuit, in connection with complainant's civil case and subsequent appeal over which the judges presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.

Complainant alleges that, in presiding over and dismissing his district court case and appeal, both the district and circuit judges were biased against complainant because he is incarcerated. Complainant asserts that, as a result of this bias, the district judge denied complainant's motions to amend and for relief from judgment and that the appellate judges wrongfully affirmed the district judge's orders. Complainant further alleges that these rulings were unjustified, an abuse of discretion, and lacked reasoning. Complainant also asserts that the "courts" denied his requests for documents and information because he is incarcerated.

The reviewed record provides no support for complainant's conclusory allegations of judicial wrongdoing. According to the record, complainant sued a financial institution seeking access to certain documents under federal law. The district judge ordered the United States Marshals Service to serve defendant and granted complainant's motion for an extension of time to complete service. Defendant filed a motion to dismiss for failure to state a claim and insufficient service. The district judge allowed defendant's motion and dismissed the case for failure to state a claim. Although complainant appealed the dismissal, he also filed motions to amend his complaint and for relief from judgment and clarified the scope of the appeal. The district judge denied the motions on the ground that complainant failed to allege a plausible claim.

Complainant subsequently filed a petition for en banc rehearing of the district judge's order denying the motions to amend and for relief from judgment, which the Court of Appeals denied.¹ Appellee filed a motion for summary disposition and, subsequently, a motion to dismiss for failure to prosecute. One of the subject circuit judges directed complainant to either move to dismiss the appeal or respond to the motion for summary disposition. The same circuit judge allowed complainant's two requests for additional time to respond to the motion for summary disposition. In response to complainant's request, clerk's office staff provided complainant a copy of appellee's motion. After complainant responded to the motion for summary disposition, the Court of Appeals granted appellee's motion and affirmed the district court's dismissal of the

¹ One of the three circuit judges who ruled on this matter was not among the judges named in the complaint.

proceeding, explaining that appellee was not subject to one federal law and that complainant did not have standing under another. The court subsequently denied complainant's motion to reconsider, as well as a motion for sanctions that appellee had filed.

The reviewed record provides no support for complainant's claims that any of the subject judges were biased against complainant because he is incarcerated or for any other reason, abused their discretion, or engaged in any other wrongdoing in presiding over complainant's cases. To the contrary, the record establishes that the judges gave complainant ample opportunity to present his claims through multiple extensions of time and other rulings in his favor, considered the substance of complainant's submissions, and provided the legal bases for their rulings. Accordingly, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

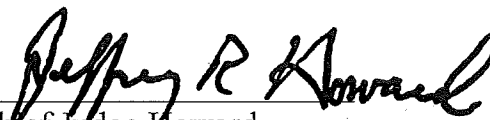
Where, as here, there is no evidence of improper judicial motive, complainant's objections to the courts' rulings, including the claim that the judges failed to substantiate their rulings are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation 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."). 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, contrary to complainant's allegations, court staff provided complainant with the documents he requested. Regardless, the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge. See, e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at 7. Accordingly, this claim is 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 Nos. 01-19-90001, 01-19-90002, 01-19-90003, and 01-19-90004 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 29, 2019
Date



Chief Judge Howard