

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90006, 01-19-90007, AND 01-19-90008

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: AUGUST 16, 2019

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against one appellate and two district judges in the First Circuit. Complainant alleges judicial misconduct in connection with his civil rights case and subsequent appeal, over which the district judges and circuit judge presided, respectively.¹ The misconduct complaint is baseless and is not cognizable.

¹ This is complainant's third misconduct complaint related to the same case that is the subject of the instant complaint and fourth complaint overall. In 2012, he filed a misconduct complaint alleging that one of the district judges named in the instant complaint engaged in judicial misconduct in presiding over the case. Then Chief Judge Lynch dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, January 31, 2013; and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, June 19, 2013. In 2018, complainant filed a misconduct complaint against five appellate judges (including the one named in the instant complaint) and the two district judges named in the instant complaint in connection with the same case and its appeal. Judge Kayatta dismissed the misconduct complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Kayatta, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-18-90002 -- 01-18-90008, October 26, 2018. In 2018, complainant also filed an unrelated misconduct complaint against a district judge in connection with a different civil rights case over which the judge presided but to which complainant was not a party. I dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-18-90010, October 29, 2018.

Repeating allegations from his previous misconduct complaints, see supra, nte. 1, complainant alleges that the district judges and the appellate judge should have recused from his district court case and subsequent appeal, respectively, because each judge had a conflict of interested based on the President who nominated them. Complainant further alleges that the judges "conspired to deny [complainant] his Constitutional right to a fair and unbiased adjudication of" his case. Complainant seems to assert that two of the judges "dismissed and covered up" the other judge's "refusal to recuse," illegally intercepted mail addressed to other judges, and are concealing information relevant to his case. Complainant also alleges that one of the judges is racially biased, committed perjury by intentionally misrepresenting complainant's legal arguments, and denied him his right to be heard and committed a fraud on the court when the judge dismissed his case.

The misconduct complaint is meritless and is simply another attempt by complainant to reassert his objections to the judges' rulings in his underlying case and subsequent appeal, both of which have been fully and finally terminated. The reviewed record, including the misconduct complaint, the docket of the proceedings, and the courts' orders, provides no support for complainant's conclusory allegations of bias or other wrongdoing by any of the subject judges. The record indicates that, shortly after complainant filed a civil rights case against state government officials, he requested that the district judge to whom the case was initially assigned (first subject district judge) recuse because of a purported conflict of interest. The judge denied the recusal request

and dismissed the case for failure to state a claim and for lack of standing, and the Court of Appeals affirmed the order of dismissal. Over the next several months, complainant filed numerous pleadings, including a motion to vacate the Court of Appeals' judgment, which the Court denied.

The record further indicates that, more than a year after the mandate had issued, complainant filed a motion in the district court, asking the court to reopen the case and to reconsider the order of dismissal and the first subject district judge's recusal. The first subject district judge denied the motion as untimely and repetitive, and explained that complainant's redundant allegations of conflict of interest did not provide a basis for reopening the case.

According to the record, more than a year later, complainant sought to file an amended complaint, adding the first subject district judge as a defendant. The first subject district judge recused, and the case was reassigned to the second subject district judge, who denied the motion. Subsequently, the district court docketed a letter from complainant to the chief district judge, in which he stated that the first subject district judge should have recused. In an electronic order, the second subject district judge explained that the chief district judge does not have jurisdiction to review decisions of other judges, and that the court would take no further action on the letter.

Complainant provides, and the record reveals, no information to support the allegation that any of the subject judges was biased or had a conflict of interest that warranted recusal, either because of the judge's Presidential nomination or for any other

reason. See, e.g., Code of Conduct for United States Judges, Canon 3(C)(1) (providing grounds for questioning judge's impartiality).² Likewise, neither complainant nor the record provides any support for complainant's allegations that any of the subject judges concealed evidence or "intercepted" complainant's mail.³

Further, complainant's conclusory allegations that the first subject district judge intentionally misrepresented complainant's legal arguments or that the subject judges conspired to deny complainant fair adjudication of his cases are also unfounded. Rather, the record shows that each of the subject judges issued reasoned rulings that reflected consideration of complainant's pleadings. See supra, pp. 2-3. Therefore, 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 bias or improper motive, complainant's objections to the courts' orders, including, but not limited to, the denial of complainant's motions for recusal and the orders dismissing his district court case and affirming its dismissal, 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

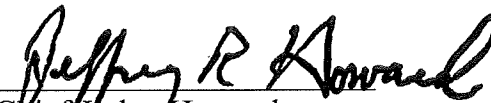
² See also Rules for Judicial-Conduct and Judicial-Disability Proceedings, Commentary on Rule 4 (explaining that a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute).

³ There are numerous letters from complainant docketed in both his district court and appellate cases. Two of the letters docketed in the district court case are addressed to judges other than the subject judges, both of which seek action in his district court case, and therefore, were appropriately referred to the presiding district judge. See also supra, p. 3.

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 Nos. 01-19-90006, 01-19-90007, and 01-19-90008 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

August 16, 2019
Date


Chief Judge Howard