

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-19-90009

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 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.¹ Complainant alleges judicial misconduct in connection with a civil case over which the judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge dismissed her case without a hearing, improperly delayed the investigation of the claims underlying her case, and engaged in malpractice. She contends that the judge improperly relied on defense counsel's false claim that complainant had neglected to exhaust administrative remedies prior to bringing suit in the district court. She further alleges that the judge engaged in "biased business practices" and "interrogated [complainant] aggressively." Complainant makes other

¹ Complainant also makes allegations against a retired magistrate judge from the First Circuit. As the judicial misconduct process applies only to current 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).

diffuse claims of wrongdoing, including that the court subjected her to libel and slander, and appears to seek monetary damages.

As an initial matter, the judicial misconduct complaint process does not provide an avenue for obtaining damages. 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, the docket of the proceeding, complainant's district court filings, and the court's orders, provides no evidence for complainant's allegations of judicial wrongdoing. The record indicates that complainant sued a federal agency and a state trial court, alleging, in part, failure to protect complainant from abuse and neglect, and misuse of government funds which had been assigned to complainant. Complainant sought substantial damages.

The record further shows that the presiding magistrate judge gave complainant an opportunity to amend her complaint, informing her that the federal government and its agencies generally had immunity against suits for monetary damages except in circumstances which complainant had not alleged. The court further ordered complainant to identify the entity or individual on whom service could be effected on behalf of the trial court defendant. After complainant failed to amend her complaint or indicate whom to serve on behalf of the trial court defendant, the federal agency moved to dismiss the case, arguing, among other things, that complainant had failed to exhaust administrative remedies. Complainant countered, in a written response, that she had indeed exhausted administrative remedies, but did not provide documentation of such to the court. The

district judge then dismissed the case against the federal agency, finding that it was not subject to the statute upon which complainant based her claims, and even if it were, complainant had not exhausted administrative remedies. Complainant filed several motions to seal, which the court denied.

The court then ordered complainant to show cause why the case should not be dismissed for failure to serve the remaining defendant. Complainant did not respond to the order, and the district judge dismissed the case. Complainant's multiple efforts to reopen her case or seek clarification, as well as two appeals, were unsuccessful.

Complainant's conclusory assertions that the district judge was biased, addressed complainant "aggressively" or improperly, or engaged in any other wrongdoing are not supported by any evidence. The court systematically addressed each of complainant's numerous and often repetitive filings, and provided the reasons for its orders. Nor did the court hold any hearing or otherwise subject complainant to questioning, let alone "interrogat[ion]." Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 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 bias or improper judicial motive, complainant's objections to the substance of the district judge's rulings -- including, but not limited to, dismissing the case for failure to exhaust administrative remedies and without a hearing -- 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 . . . 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 same holds true for complainant's claim that the judge contributed to a delay in the investigation of complainant's underlying claims. 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).

For the reasons stated, Complaint No. 01-19-90009 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).

November 12, 2019
Date


Chief Judge Howard