

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90019, 01-19-90020, 01-19-90021, and 01-19-90022

BEFORE
Lynch, Circuit Judge

ORDER

ENTERED: FEBRUARY 20, 2020

Complainant, a 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. Complainant alleges judicial misconduct in connection with a civil case over which the district judge presided and four related appeals over which the appellate judges presided. The misconduct complaint is baseless, is not indicative of misconduct, and is not cognizable.

Complainant alleges that, in presiding over complainant's civil proceeding, the district judge denied complainant the fair and impartial adjudication "required by due process." Complainant asserts that the district judge made intentionally false statements of law and fact in the court's orders, including misquoting complainant's expert, and that, as a result, the court issued a series of improper decisions in complainant's case, including dismissal of the proceeding and denial of complainant's motions for relief from judgment. Complainant contends that, by improperly denying complainant's requests to reconsider prior rulings, the district judge concealed and committed a felony, and violated

Canon 2(A) of the Code of Conduct for United States Judges (Code of Conduct) (requiring judges to "respect and comply with the law and []act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.").

Complainant alleges that the appellate judges failed to read complainant's appellate brief, failed to conduct "a fair review," or lacked the subject matter expertise necessary to address complainant's appeal adequately and, as a result, deprived complainant of the "impartial . . . appellate review" to which complainant was entitled under Canon 3(A)(4) of the Code of Conduct.¹ Complainant contends that the appellate panel's rulings contained false statements of fact and law, and that the panel exhibited bias and was disrespectful, in violation of Canon 3(A)(3) of the Code of Conduct, when it dismissed one of complainant's arguments as "frivolous."² Complainant avers that the appellate judges abused their power by denying a motion to allow complainant and other appellants in the proceeding to pay a single filing fee. Finally, complainant speculates that the appellate judges conspired with the district judge to uphold the district court's dismissal of complainant's underlying case.

Complainant requests "correction" of the district judge's decisions, and that each of the judges be prosecuted, impeached, and ordered to pay complainant punitive damages.

¹ Canon 3(A)(4) provides, in relevant part, that "[a] judge should accord to every person who has a legal interest in a proceeding . . . the full right to be heard according to the law . . ." Code of Conduct for United States Judges (Code of Conduct), Canon 3(A)(4).

² Canon 3(A)(3) provides that "[a] judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." *Id.*, Canon 3(A)(3).

As an initial matter, the judicial misconduct complaint process does not provide an avenue for obtaining damages or other relief in a case, including revision of a judge's decisions or rulings. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Conduct), Rules 11, 19, and 20. Further, referral for potential impeachment or prosecution of a judge is not available where, as here, complainant's allegations are not substantiated by the record and are not cognizable. See id.

The reviewed record, including the misconduct complaint, dockets of the multiple proceedings, complainant's filings, and the courts' orders, provides no evidence that any of the judges violated the Code of Conduct, let alone engaged in judicial misconduct, in presiding over complainant's cases.³ The record indicates that complainant and several others filed a civil complaint alleging violations of federal law and seeking miscellaneous relief. Following a magistrate judge's report and recommendation that the case be dismissed, the district judge issued a lengthy order analyzing complainant's claims and dismissing the proceeding for failure to state a claim under the governing federal statute and because the claims were barred by the statute of limitations. The district judge subsequently denied complainant's motion for reconsideration of this order in a several-page order explaining, among other things, that there was no legal basis for tolling the statute of limitations.

³ 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). Not every violation of the Code should lead to disciplinary action." Code of Conduct, Canon 1 Commentary. See also Rules of Judicial Conduct, Commentary on Rule 4 ("While the Code[of Conduct]'s Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules [of Judicial Conduct].").

Complainant and a couple other plaintiffs in the case appealed its dismissal, and complainant appealed the denial of the motion for reconsideration. The Court of Appeals consolidated the appeals and issued procedural orders in response to the appellants' requests. The three appellate judges who are the subject of this complaint summarily affirmed the judgment below, agreeing with the district judge that plaintiff-appellants' claims were time barred and not subject to equitable tolling. In its unpublished decision, the panel also denied as moot the appellants' request to pay a single filing fee for their consolidated appeals. The Court denied complainant's subsequent request for reversal of the summary affirmance or, in the alternative, a panel rehearing, and for a rehearing en banc.

The record reflects that, after dismissal of the appeal, complainant filed a motion for relief from judgment, which the district judge denied, explaining that the governing rule of procedure is intended to correct mistakes on the part of parties, not the court.⁴ In the order, the district judge further explained that complainant had failed to establish that new expert evidence could not reasonably have been obtained in a timely fashion or would have given rise to a meritorious claim. The Court of Appeals summarily dismissed complainant's appeal of this ruling, and the United States Supreme Court denied complainant's petition for a writ of certiorari. Nearly two years later, complainant filed a second motion for relief from judgment, to which complainant appended, among

⁴ Complainant correctly notes that this order contains a typographical error that misquotes an expert's affidavit. This error has no bearing on the substance of the court's order or on the merit of complainant's misconduct complaint.

other documents, a request that the case be reassigned to another district judge. The district judge denied the second motion for untimeliness and for failure to provide grounds for relief from judgment. Complainant's appeal of the order is pending.

Complainant's allegations that the district judge and the appellate judges intentionally misstated facts or law, neglected to review the record adequately, or engaged in a conspiracy are wholly unsubstantiated. Nor does the record lend any support to the claims that the judges failed to comply with the law or deprived complainant of a full right to be heard, as required by the Code of Conduct, Canons 2(A) and 3(A)(4), respectively. See supra at 2, and note 1. To the contrary, the record reflects that, over the course of a number of years, the judges thoroughly and systematically addressed complainant's multiple filings in both the district court and on appeal, and consistently explained the reasons for the courts' orders. 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).

The appellate court's use of the term "frivolous" to describe complainant's argument and its use of another phrase with which complainant takes issue does not violate the Code of Conduct or indicate improper judicial motive. See 28 U.S.C. § 352(b)(1)(A)(i) and Rules of Judicial Conduct, Rule 11(c)(1)(A) ("A complaint may be dismissed in whole or in part to the extent that . . . the complaint . . . alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts . . ."). See also notes 1 and 2, supra. Likewise, the district judge's error in quoting the expert is not indicative of misconduct. See 28 U.S.C. §

352(b)(1)(A)(i), Rules of Judicial Conduct, Rule 11(c)(1)(A), and note 4, supra.

Accordingly, the misconduct complaint is dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Conduct, Rule 11(c)(1)(A).

Where, as here, there is no evidence of bias or improper judicial motive, complainant's objections to the courts' rulings - including the district judge's dismissal of the underlying civil case and denial of complainant's motions for relief from judgment, and the appellate court's ruling affirming the dismissal of the proceeding and denying the motion to pay a single filing fee - 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 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."); see also id., Commentary on Rule 4 ("Rule 4(b)(1) . . . preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling."). 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. 01-19-90019, 01-19-90020, 01-19-90021, and 01-19-90022 are 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).

Feb 20 2020
Date

Sandra L. Lynch
Judge Lynch