

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90023 and 01-19-90024

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: APRIL 24, 2020

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

The complaint arises from complainant's objections to a number of court orders issued in his litigation. Complainant alleges that the judges "betrayed the interests of justice" by denying his motions to compel discovery. Complainant asserts that he needed the compelled evidence to support his motions for appointment of counsel, which complainant contends that the court also improperly denied. Complainant further objects to the court's orders denying complainant's requests to provide him with copies of certain

documents that allegedly had "vanished" while in defendants' control.¹ Additionally, complainant objects to the court's orders denying complainant's motions to stay the proceedings. Finally, complainant seeks recusal of both judges from complainant's "upcoming and future litigation."

As a preliminary matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including the recusal of federal judges from pending or future litigation. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

The reviewed record, including the misconduct complaint, as well as the case dockets and orders issued in complainant's proceedings, is devoid of any information suggesting that either judge was improperly motivated in issuing any of the orders to which complainant objects.

The record indicates that complainant filed the first proceeding against a medical provider at the prison at which complainant is incarcerated and related personnel, alleging deliberate indifference towards his medical needs. Over the course of this proceeding, complainant filed numerous motions for appointment of counsel, asserting multiple grounds, including but not limited to: indigency; lack of education/legal knowledge; medical issues; and insufficient access to the law library and/or to his legal

¹ To the extent that complainant includes allegations of improper conduct by defendants in his civil cases and/or other related individuals, these claims are not addressed, as the judicial misconduct complaint process only provides an avenue for asserting claims against current federal judges. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1(b).

documents. The magistrate judge denied the motions on varying grounds, noting, in part, that complainant's filings indicated that complainant could represent himself adequately in the sufficiently straightforward proceeding, and that, as a result, the interests of justice did not require the appointment of counsel. Complainant filed objections to several of these orders, which the district judge denied, concluding that the magistrate judge's orders were neither clearly erroneous nor contrary to the law.

Complainant also filed several motions requesting that the court send him copies of previously filed documents, asserting, in part, that prison staff had seized his voluminous legal files and returned them incompletely and in disarray, and had afforded him insufficient materials and computer access. The magistrate judge granted some of these requests and denied others on multiple grounds, including the scope of the requests, that complainant was seeking copies of documents he had filed, and that complainant's motion suggested that complainant had possession of or access to the documents.²

Complainant filed numerous motions to stay this proceeding, as well. The magistrate judge allowed several of these motions, in part, providing complainant with an extension of the time to respond to defendants' motion to dismiss. The magistrate judge denied complainant's other motions to stay, in which complainant asserted lack of access to legal resources and to his own case files, concluding that a stay was not warranted

² Complainant also filed a motion requesting that the court order the prison to return to him all of his legal documents pertaining to the case and to allow him to keep those documents in his cell during the pendency of the litigation. The magistrate judge denied the motion, determining that the prison was not a party to the action, had not been served with a copy of complainant's motion, and the request appeared to relate to the administrative processes of the prison, not to the subject of the action.

and/or would unnecessarily delay the litigation. Complainant objected to several of these orders, and the district judge denied the objections.

Ultimately, judgment was entered for defendants based on the magistrate judge's multi-page recommended ruling, which thoroughly detailed complainant's claims in light of the evidence and the governing law, and recommended that the court enter summary judgment for defendants based on complainant's failure to exhaust administrative remedies and to establish complainant's claim of deliberate indifference to his medical needs.

Prior to the dismissal of the first proceeding, complainant filed a civil action against the state department of corrections and others, alleging excessive force and denial of due process during disciplinary proceedings. During the second proceeding, complainant filed several motions for appointment of counsel on grounds similar to those asserted in the first case, also asserting retaliation by prison staff. The magistrate judge denied these motions for reasons akin to those relied on in the first proceeding. Complainant's objections to the magistrate judge's orders were again unsuccessful.

Complainant also filed several unsuccessful motions seeking to compel discovery. The magistrate judge denied complainant's request that the court order defendants to produce all recordings related to the incident at issue, as defendants had represented that they produced the only related recording. Complainant's subsequent motions to compel were denied for failure to request leave of court, as required by the court's local rule, and

because the discovery period had closed. The district judge affirmed each of these rulings.

Complainant also filed several motions to stay or extend the second case, seeking an extension of discovery and dispositive motion deadlines because he was overburdened and denied access to necessary resources, and seeking to suspend the proceeding pending rulings on complainant's interlocutory appeals. The magistrate judge denied the motions, determining, respectively, that the discovery period had expired and an extension was not warranted, and that the case could proceed without addressing issues involved in the appeals. Complainant's objections to these orders were unsuccessful.

After complainant was allowed further extensions of time and filed another unsuccessful motion to stay the proceedings, the magistrate judge issued a Report and Recommendation granting defendants' motion for summary judgment in part because the undisputed record did not support complainant's claims. The court affirmed the recommended decision, entered judgment accordingly, and, in a separate order, denied complainant's subsequent request for further relief.

The reviewed record is devoid of any information suggesting that either the magistrate judge or the district judge was improperly motivated in issuing any of the orders to which complainant objects. Nor does complainant provide any information suggesting that discovery to which he was denied would have supported his requests for appointed counsel. To the contrary, the record demonstrates that the magistrate judge and the district judge considered the substance of complainant's numerous motions for

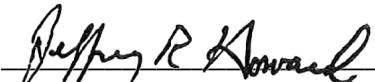
appointment of counsel, to stay the litigation, to obtain documents, and to compel discovery³, and provided reasoned analyses for the court's rulings. In so doing, the judges provided complainant with multiple extensions of time and opportunities to supplement the record. See supra, pp. 2-5.

Where, as here, there is no claim or evidence of bias or improper judicial motive, complainant's objections to the court's rulings - including those denying complainant's motions for appointment of counsel, for replacement of documents, to compel discovery, and to stay the proceedings - 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. . . . 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."). Therefore, the complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

³ The record does not indicate that complainant filed any motions to compel discovery in his first case.

For the reasons stated, Complaint Nos. 01-19-90023 and 01-19-90024 are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

April 24, 2020
Date


Chief Judge Howard