

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-19-90034

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JULY 29, 2020

Complainant, a pro se debtor, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a bankruptcy judge in the First Circuit. Complainant alleges judicial misconduct in connection with his chapter 7 case over which the subject judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant asserts that, in presiding over the proceeding, the judge violated the Code of Conduct for U.S. Judges (Code of Conduct) and exhibited bias in favor of the chapter 7 trustee (trustee). Complainant alleges that the judge's conduct at a number of specified hearings violated Canons 1, 2(A), 3(A)(1), and 3(A)(3) of the Code of Conduct.¹ Complainant contends that the judge harassed, intimidated, and lied to

¹ Canon 1 provides that "[a] judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved." Canon 2(A) provides that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 3(A)(1) provides that "[a] judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan

complainant in order to prevent him from representing himself by telling him that he would need to appear in person at an evidentiary hearing but then not requiring him to do so. Complainant continues that the judge was dishonest when misrepresenting complainant's procedural question as a substantive legal question and refusing to answer it, and when not allowing complainant to file a second motion addressing the trustee's failure to file a timely objection.

Complainant alleges that the judge showed bias in favor of the trustee and failed to follow applicable laws and procedural rules by: threatening to liquidate complainant's account and to bar complainant from filing additional amended schedules; allowing the trustee, but not complainant, to present oral argument that was not included in briefing regarding the timeliness of the trustee's objection; issuing rulings without citing caselaw; considering legal issues and citing caselaw not presented by the parties; and stating that the judge "did not care" if the trustee communicated with complainant regarding a potential legal claim, and thereby, allowing the trustee to violate the duty to provide requested information to complainant.² Complainant adds that, by interrupting complainant at a hearing, the judge was not patient, dignified, or respectful of complainant.

interests, public clamor, or fear of criticism." 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."

² Complainant asserts that the judge allowed the trustee to violate the duty to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest." See Handbook for Chapter 7 Trustees, Ch. 6(A)(7).

Complainant also asserts that the judge wrongly declined to hold a hearing on complainant's motion for sanctions, and wrongly ruled on the trustee's objection to complainant's motion for sanctions before complainant had a chance to respond.

Complainant further alleges that the judge wrongly issued a bench ruling, rather than a written decision, thus requiring complainant to pay for a transcript.

Complainant requests that the judge recuse, pursuant to Canon 3(C)(1) of the Code of the Conduct, based on this purported misconduct, and that the judge be sanctioned or disciplined.

As an initial matter, the judicial misconduct complaint process does not provide for much of the relief complainant requests. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20(b). Further, none of the requested relief is 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 and the docket, transcripts, and audio recordings of the proceedings, provides no support for complainant's allegations that the judge was biased, harassed or lied to complainant, otherwise treated complainant improperly in violation of the Code of Conduct³, or engaged in any other wrongdoing. Complainant filed pro se a chapter 7 petition and

³ See Code of Conduct, Rule 1 Commentary (While 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), [n]ot every violation of the Code should lead to disciplinary action."), and Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code[of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the [Misconduct] Act and these Rules . . ."). In the present matter, there is no indication that the judge violated the Code of Conduct, let alone engaged in misconduct.

amended schedules and statements (First Amended Schedules), which listed one of complainant's accounts as possibly exempt from the bankruptcy estate, without specifying the bases for the exemption.

Complainant retained counsel, who filed complainant's further amended schedules (Second Amended Schedules), listing the account as fully exempt from the bankruptcy estate based on state law. The trustee objected, asserting that only a portion of account was exempt.

Complainant's counsel filed a motion to withdraw because complainant wished to proceed pro se. At a hearing, at which complainant appeared by phone, the judge advised complainant against proceeding pro se in light of the complicated legal issues involved in the case, explained that complainant's pro se filings have been procedurally deficient and must comply with and cite to applicable statutes, caselaw, and rules, and granted counsel's motion to withdraw.

With respect to the exemption, the judge ordered the parties to submit statements of facts, as appropriate, and explained that, if necessary, the court would hold an evidentiary hearing at which complainant would need to appear. The judge directed complainant to stop speaking while the court coordinated with the parties, and, at complainant's request, instructed the trustee to confer telephonically with complainant regarding the joint statement of facts. With respect to the potential legal claim, the judge indicated that the court was not concerned with whether complainant and the trustee had spoken, only that complainant provide written information to the trustee regarding the potentially beneficial claim and that the trustee file a status report on the same. At oral

argument on the contested exemption, which complainant attended by phone, the judge admonished the trustee for failing to raise relevant caselaw and declined to answer a question that complainant asked, explaining that it was a substantive legal issue. The judge issued a lengthy order holding that a portion of the account was exempt.

Complainant then filed a motion requesting that the court fully exempt the account because the trustee did not timely object to the claimed exemption in the First Amended Schedules. The trustee opposed the motion arguing that no objection was required until complainant included the bases for the exemption in the Second Amended Schedules.

At a hearing on the timeliness of the trustee's objection, at which complainant again appeared by telephone, the court acknowledged complainant's right to file amended schedules, but noted that, if the continued filing interfered with the administration of the estate, the court may restrict further filings and order the liquidation of the account. The judge allowed complainant to argue in support of a motion for sanctions based on the trustee's untimely objection and provided complainant the opportunity to file a supplemental motion on the timeliness issue. The judge explained that if the court determined that the trustee timely objected, there would be no basis for sanctions.

Thereafter, the judge issued a bench decision holding that a portion of the account was exempt and that the trustee timely objected to the claimed exemptions, explaining each ruling, while citing applicable case law. Subsequently, the judge denied complainant's motion for sanctions.

Complainant's allegations that the judge violated the Code of Conduct, was biased against complainant, or engaged in any other misconduct are baseless. Rather, the

reviewed record demonstrates that the judge held multiple hearings, at which complainant presented his arguments, including at least one which was not scheduled for hearing, at length; issued extensive, reasoned rulings, citing to applicable caselaw; and granted a number of complainant's requests, including repeatedly allowing him to appear telephonically and to supplement his filings. See supra, p. 4-5.

With respect to complainant's specific claims, the lengthy record does not suggest that the judge lied to, intimidated, or harassed complainant with respect to his request to represent himself, when explaining that complainant would need to appear in person at an evidentiary hearing⁴, when declining to answer what the court determined to be a substantive legal question⁵, or otherwise. Further, despite complainant's claim to the contrary, the judge did not bar complainant from rechallenging the timeliness of the trustee's objection to the contested exemption; rather, the court provided complainant the opportunity to do so. See supra, p. 5.

Likewise, the judge's warning that the court may order liquidation of the account and limit complainant's filings, and instructing the complainant and trustee to communicate information regarding the potential legal claim do not evidence bias, subversion of the trustee's compliance with governing obligations, see nte. 2, supra, or the violation of any procedural rules.⁶ Further, though the judge would have discretion in this

⁴ The judge held oral argument, rather than an evidentiary hearing, at which complainant would have been required to appear in person. See supra, p. 4-5.

⁵ See Code of Conduct, Canon 4(A)(5) ("A judge should not practice law. . . .").

⁶ In any event, a judge's non-compliance with procedural rules would not alone constitute bias. See Barron, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90036 - 01-16-90041, January 27, 2017, at p. 2 (complainant's allegation that a judge violated a procedural rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct).

regard, as well, the trustee's oral argument regarding the timeliness of the objections was based on the briefs.

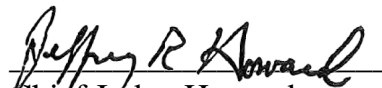
Nor does the judge's interruption of complainant at a hearing constitute a violation of the Code of Conduct, let alone convey "'the sort of deep-seated unequivocal antagonism' that may constitute misconduct." See Rules of Judicial-Conduct, Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants . . . in a demonstrably egregious and hostile manner . . ."), and Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015 (July 11, 2012), at p. 6 (quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, Feb. 4, 2011)). To the contrary, "[a] judge must exercise reasonable discretion over his or her courtroom environment," and there is no evidence that, when instructing complainant to stop speaking, the judge "acted for any inappropriate reason or improperly exercised [her] judgment." See Howard, C.C.J., Order, In Re Complaint No. 01-15-90012 (Oct. 7, 2015), at p. 4 (quoting Boudin, C.C.J., Order, In Re Complaint No. 429 (June 12, 2006), at p. 4). 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).

As there is no evidence of improper conduct or motive, complainant's objections to the substance of or grounds for the court's rulings, including the cited caselaw or absence thereof, 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 . . . or improper conduct . . . 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."). The same holds true for complainant's objection to the absence of a hearing on the motion for sanctions, denial of complainant's motion for sanctions before complainant filed a response to the trustee's objection, and to the form or substance of the bench decision. See id. 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. 01-19-90034 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.

July 29, 2020
Date


Chief Judge Howard