

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-19-90037

---

BEFORE  
Howard, Chief Circuit Judge

---

ORDER

ENTERED: AUGUST 6, 2020

---

Complainant, an incarcerated pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with the judge's denial of two motions that complainant filed. The misconduct complaint is baseless and is not cognizable.<sup>1</sup>

Complainant alleges that the judge interfered in complainant's criminal cases, over which the judge did not preside and which had concluded approximately 20 years ago.

---

<sup>1</sup> This is complainant's third misconduct complaint. In his first misconduct complaint, complainant alleged that a First Circuit district judge, who is not the subject of the present matter, was biased against complainant in presiding over his criminal case. See In Re: Judicial Misconduct Complaint No. 01-08-90011. Then Chief Judge Lynch dismissed the complaint as baseless and as not cognizable, and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-08-90011 (July 17, 2008), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-08-90011 (Jan. 29, 2009). In his second misconduct complaint, complainant alleged that three First Circuit appellate judges prematurely ruled in his appeal of the criminal case. See In Re: Judicial Misconduct Complaint Nos. 01-10-90024 -- 01-10-90026. Judge Lynch dismissed the complaint as baseless and as not cognizable, and the Judicial Council affirmed the order of dismissal. See Lynch, C.C.J. Order, In Re: Judicial Misconduct Complaint Nos. 01-10-90024 -- 01-10-90026 (March 21, 2011), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-10-90024 -- 01-10-90026 (Aug. 2, 2011).

Complainant contends that the judge "vindictively" denied complainant's constitutional rights to due process, access to the courts, and free speech by "block[ing]" complainant from filing a "Notice of Appeal." Complainant concludes that the judge "threaten[ed]" complainant not to file motions in his criminal cases, and requests that the judge be prohibited from ruling in his cases and directed to undergo evaluation, training, and investigation.

As an initial matter, the judicial misconduct complaint process does not provide for complainant's requested relief where, as here, the claims are presented without any basis in fact and are not cognizable. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20(b).

The reviewed record, including the misconduct complaint and the dockets and orders of the relevant proceedings, provides no basis for complainant's conclusory allegations that the judge was improperly motivated in ruling on complainant's motions or engaged in any other wrongdoing. According to the record, more than 20 years ago, complainant was indicted in two separate criminal cases involving drug and conspiracy charges. Complainant pled guilty in the first criminal case, a jury found him guilty of several charges in the second criminal case, and the presiding judge in each case sentenced complainant to terms of imprisonment.<sup>2</sup>

---

<sup>2</sup> Neither of the district judges who presided over complainant's criminal cases is the subject of the present misconduct complaint.

The record indicates that, several years later, complainant filed pro se a petition to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255 in both of his cases. The presiding judge dismissed the petition filed in the first criminal case. The government filed a response to the petition in the second criminal case, and complainant filed a multitude of lengthy pleadings, memoranda, and affidavits. The presiding judge of the second criminal case denied the § 2255 petition, as well as complainant's numerous other motions, in a lengthy order. Because the judge determined that complainant had made a host of frivolous arguments and filed a multitude of lengthy, incoherent, meritless, and duplicative motions, the court enjoined complainant from filing additional pleadings without first obtaining prior written approval.

The record further indicates that, a number of years later, complainant filed the motions at issue in the misconduct complaint. In the first of these motions, complainant sought leave to file a motion requesting the return of funds that complainant alleged the court unlawfully seized in connection with the first criminal case. In the second motion, complainant requested that the court vacate the order enjoining complainant's filing without prior approval. Both matters were assigned to the subject judge pursuant to local rule. The judge denied both motions and determined that complainant failed to provide any basis for relieving complainant from enjoinder.

Complainant's conclusory allegations of judicial wrongdoing are baseless. Complainant provides, and the record reveals, no evidence to support the allegations that the judge interfered in his cases, threatened complainant, or was improperly motivated in

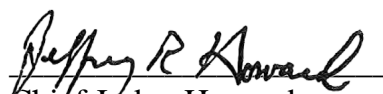
ruling on his motions. Complainant's cases were assigned to the judge in accordance with the court's procedure. The judge denied complainant's motions pursuant to the court's order enjoining complainant from filing and issued an order explaining that complainant failed to provide a basis for suspending the enjoinder. Therefore, the 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 judge's orders dismissing his motions 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.").

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. 01-19-90037 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 6, 2020  
Date

  
Chief Judge Howard