

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-19-90048 and 01-19-90049

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BEFORE  
Torruella, Circuit Judge

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ORDER

ENTERED: OCTOBER 8, 2020

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against an appellate judge and a district judge in the First Circuit. Complainant alleges that the district judge engaged in judicial misconduct in presiding over complainant's civil case and that the appellate judge engaged in judicial misconduct in dismissing complainant's previous judicial misconduct complaint against the district judge. These misconduct complaints, which are complainant's second and third, respectively, are not indicative of misconduct, are baseless, and are not cognizable.<sup>1</sup>

With respect to the district judge, complainant alleges that, while presiding over complainant's civil case, the judge violated the law by "falsifying" a document when the court extended a filing deadline for more defendants and for a longer time period than complainant had agreed. Complainant further alleges that the district judge committed a

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<sup>1</sup> In complainant's first misconduct complaint, complainant alleged judicial misconduct in connection with several civil cases over which the district judge presided, including the civil case at issue in the present matter. The appellate judge dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

crime and violated a federal rule of civil procedure when the judge "falsely" misstated the date an order had been issued and failed to docket this order until several months later. Complainant adds that the district judge improperly allowed one defendant to file a motion to dismiss several days after the deadline and another defendant to file several untimely motions for further extensions of time.<sup>2</sup>

With respect to the appellate judge, complainant alleges that the judge was dishonest, participated in a conspiracy to violate complainant's rights, and violated the judge's oath of office in dismissing complainant's first misconduct complaint against the district judge. See note 1, supra. Complainant concludes that, in dismissing complainant's first misconduct complaint, the appellate judge either did not read the underlying district court record or improperly relied on the district judge's rulings.

The reviewed record, including the misconduct complaints, the order dismissing the previous misconduct complaint, and the dockets of the underlying district court proceedings, provides no evidence for complainant's allegations that the district judge falsified documents or engaged in any other misconduct. The record indicates that, after complainant filed a civil case against multiple defendants, two defendants filed a motion on behalf of all defendants, to which complainant assented, requesting an extension of the deadline to file an answer. The district judge granted the motion. Complainant filed a motion for default judgment and objected to the extension order, indicating that complainant had been informed, when assenting to the extension, that it would be for a

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<sup>2</sup> Complainant also levies allegations against attorneys for the defendants in complainant's civil case. As the judicial misconduct process applies only to complaints against federal judges, these claims are not addressed. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1(b).

shorter time than the motion requested and would apply only to two of the defendants. The two defendants filed an opposition to complainant's motion for default judgment, affirming that they had advised complainant that they were requesting an extension on behalf of all defendants and that, while one communication had indicated mistakenly that the extension would be for the shorter duration, the attached assented-to motion provided for the longer time period. The district judge denied complainant's motion for default judgment, concluding that defense counsel had made clear that the extension would apply to all defendants, that the inconsistency in the requested duration of the extension (of roughly two weeks) was likely due to an oversight on counsel's part, which was mitigated by counsel's listing the longer period in the attached assented-to motion, and that complainant had not properly served defendants.

The record further indicates that, following complainant's attempt to serve defendants again, two of the defendants requested a several-day extension on the day their answer was due, explaining that counsel had received the full complaint only several days earlier due to deficient service of process. The district judge allowed the request. The judge subsequently granted another defendant's request for a several-day extension to file an answer that the defendant filed shortly after the expiration of the applicable deadline.

In the court's order denying complainant's motion for default judgment, the district judge erroneously noted the date that the judge had granted the defendant an extension, indicating the date as one year after the actual date. The judge subsequently directed the clerk's office to correct the typographical error.

In addition, complainant has filed over thirty motions for the district judge's recusal, all of which the court has denied, repeatedly explaining that complainant fails to demonstrate that recusal is warranted. Finally, the presiding magistrate judge in the case held a hearing on numerous pending motions, including multiple motions to dismiss filed by various defendants, and recommended that these motions to dismiss be granted in whole or in part and that complainant's motion for judgment on the pleadings be denied.

The misconduct complaints are meritless. Complainant's allegations that the district judge falsified documents or engaged in criminal conduct, either by granting the various deadline extensions or by misstating a date in the record, or engaged in any other misconduct, are presented without any basis in fact. The record offers no support for the claims that the district judge was improperly motivated in granting the defendants' motions for an extension or in making the typographical error in the date referenced in the order denying complainant's motion for a default judgment. Moreover, the referenced order allowing the motion for extension was docketed the date it was entered, not several months later as complainant alleges, and complainant was mailed a copy of the order on the same day. Neither the judge's typographical error in the date referencing this order nor its subsequent correction is remotely indicative of judicial misconduct. Therefore, the claims against the district judge are dismissed as not indicative of misconduct and as baseless, pursuant to 28 U.S.C §§ 352(b)(1)(A)(i) and 352(b)(1)(A)(iii), respectively. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(A) and 11(c)(1)(D).

Likewise, complainant presents no information suggesting that the appellate judge was improperly motivated in dismissing complainant's first misconduct complaint. To the contrary, the record indicates that the appellate judge carefully reviewed complainant's allegations and the relevant proceedings in determining to dismiss the complaint as not indicative of misconduct, as baseless, and as not cognizable.<sup>3</sup>

Where, are here, there is no evidence of bias or improper judicial motive, complainant's objections to the judges' rulings - including, but not limited to, the district judge's orders extending several deadlines, and denying complainant's motions for recusal and for default judgment, as well as the appellate judge's dismissal of the misconduct complaint - are not cognizable. As these claims amount to nothing more than a challenge to the substance of orders with which complainant disagrees, the complaints are dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. 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."), and Commentary to Rules of Judicial-Conduct, Rule 4 ("[A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . .").

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<sup>3</sup> Complainant did not file a petition seeking Judicial Council review of the appellate judge's order of dismissal.

For the reasons stated, Complaint Nos. 01-19-900048 and 01-19-90049 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). In addition, complainant should be aware that the filing of another baseless judicial misconduct complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . . .").

October 8, 2020  
Date

  
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Juan R. Torruella, U.S. Circuit Judge