

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90004

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 28, 2020

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with her civil case over which the judge presided. The complaint is baseless, is not cognizable, and is not indicative a misconduct.

Complainant alleges that the judge was biased against her, did not review the pleadings filed in her case, and misinterpreted her claims.¹ Complainant alleges that the judge improperly based the dismissal of her case on another judge's dismissal of complainant's prior civil proceeding, and asserts that the case at issue presents different claims, based on "newly accrued evidence" to which the judge's "mind was closed." Complainant contends that the previous case ruling "prejudiced" the judge to the claims and evidence presented in the proceeding at issue.

¹ Although complainant cites to provisions of the American Bar Association Model Code of Judicial Conduct, the Code of Conduct for U.S. Judges applies to the federal judiciary.

Complainant further alleges that the judge dismissed complainant's motion to amend her complaint based on "'format' rather than merit," and that, because the judge failed to address her claims, she could not appeal the order of dismissal. Complainant asserts that, having improperly predetermined its outcome, the judge did not hold any hearings in the case and surmises that the judge "knew" that the court's rulings would damage complainant's ability to secure employment, housing, and credit. Complainant adds that, in the order dismissing the case, the judge "berated" her, made arguments for defendants, and "defended" defendants' decisions not to respond to certain of complainant's pleadings.

Complainant also alleges that the judge's administrative staff was biased against her. She contends that the judge's staff failed to provide her with copies of the docket upon her request and with copies of orders until she requested them. Complainant asserts that court staff mailed documents, including the final order in the case, to complainant's outdated mailing address, which impeded her ability to file an appeal. Complainant also alleges that the court failed to docket and respond to a letter complainant submitted requesting reconsideration of the order of dismissal. Finally, complainant requests that the records in her cases be sealed.

As an initial matter, the judicial misconduct procedure does not provide an avenue for issuing an order in a case, including the sealing of records in a case. 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, the dockets of the proceedings, and the court's orders, provides no support for complainant's allegations of bias or other wrongdoing by the judge. The record indicates that complainant filed pro se a lengthy civil complaint and a motion to incorporate documents from her closed civil case², as well as a motion to compel. The judge denied the motion to compel as premature prior to defendants' appearance and granted in part the motion to incorporate documents from her previous case, explaining that the parties may cite to documents from the prior case without docketing them in the pending proceeding.³

The record further indicates that complainant filed a motion to amend her complaint and a petition for a temporary restraining order, which the judge denied, explaining that complainant failed to establish a likelihood of success on the merits and cited to the dismissal of her previous case.⁴ Defendants filed motions to dismiss, arguing in part that complainant failed to plead her claims and grounds for relief adequately, and that certain claims were barred because they had been dismissed in complainant's previous case.⁵ Complainant opposed the motions to dismiss, filed motions for summary judgment and default judgment, and requested that the court refer the case to mediation.

² The record shows that another First Circuit district judge dismissed complainant's previous civil case, which defendants had removed from state court, for failure to meet the applicable pleading requirements, among other reasons.

³ According to the docket, a copy of this order was mailed to complainant at an incorrect mailing address, which Clerk's Office staff subsequently corrected.

⁴ According to the docket, a copy of this order was mailed to complainant at the corrected address the day it was issued.

⁵ The docket indicates that, after defendants moved for dismissal, Clerk's Office staff mailed complainant a copy of the docket.

The judge ordered one defendant to notify the court whether it also sought mediation. Defendant declined to engage in mediation, and the judge denied complainant's request.⁶

According to the record, the judge subsequently issued a multiple page order granting defendants' motions to dismiss, denying complainant's motions to amend her complaint, for summary judgment, and for default judgment, and dismissing the case.⁷ The judge explained that, even construing the pro se complainant's pleadings liberally, because her original civil complaint and proposed amended complaint failed to meet the applicable pleading requirements, and because her previous case challenging defendants' conduct was unsuccessful, defendants' motions to dismiss were meritorious.

The reviewed record does not support complainant's allegations that the judge was biased or prejudiced against complainant or her claims, either due to the dismissal of complainant's previous proceeding or for any other reason. To the contrary, the record indicates that, over a period of roughly one year, the judge liberally construed and considered complainant's pleadings and issued orders clearly explaining the reasons for the court's rulings, some in her favor. See supra pp. 3-4.

Likewise, neither complainant nor the reviewed record provides any information suggesting that the judge sought to undermine complainant's reputation or "berated" complainant in the order dismissing her case. See Rules of Judicial-Conduct, Rule

⁶ The docket indicates that, in her motion requesting mediation, complainant notified the court of a change of mailing address. It appears that copies of the orders regarding mediation were mailed to complainant's previous mailing address, not to the one provided in complainant's motion.

⁷ According to the docket, a copy of this order was mailed to complainant's outdated mailing address. The day after the order was issued, complainant contacted court staff with her updated mailing address, and court staff resent the order to the new address. See supra note 6.

4(a)(2)(B) ("Cognizable misconduct . . . includes . . . treating litigants . . . in a demonstrably egregious and hostile manner . . ."). The judge outlined the facts of the case, provided the legal standards for filing a civil pleading, and explained that complainant's lengthy civil complaint included numerous generalized, conclusory, and redundant allegations but did not include short and plain allegations to which defendants could reasonably respond. There is nothing in this order, or elsewhere in the record, suggesting improper judicial motivation or "the sort of deep-seated unequivocal antagonism that may constitute misconduct." See 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, February 4, 2011).

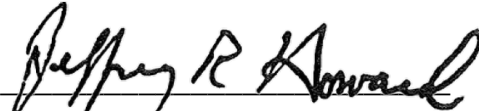
There is also no evidence that the court's administrative staff was improperly motivated in managing complainant's case or that the court failed to docket or respond to a letter complainant submitted or to complainant's other requests for documents. The record demonstrates that the court routinely mailed copies of orders to complainant, provided complainant a copy of the case docket, corrected complainant's mailing address, and mailed complainant a copy of the order dismissing the case at the corrected mailing address one day after the order issued. See supra pp. 3-4. Moreover, any errors by court staff in exercising their administrative duties would not suggest judicial bias or wrongdoing. See Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-13-90015 (December 18, 2013), at pp. 3-4 (possible clerical error of court reporter or other court staff not attributable to presiding judge nor indicative of misconduct), citing

Boudin, C.C.J., Amended Order, In Re Judicial Misconduct Complaint No. 406 (September 5, 2005), at p. 3. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(A), respectively.

As there is no evidence of bias, judicial animus, or other improper motive, complainant's objections to the court's rulings, including to the order dismissing the case, 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 . . . 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 hearings in her case. 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. 01-20-90004 is 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).

OCTOBER 28, 2020
Date


Chief Judge Howard