

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90008

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JANUARY 20, 2021

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a bankruptcy judge in the First Circuit. Complainant alleges judicial misconduct in connection with an adversary proceeding over which the judge presided. The misconduct complaint is baseless and is not cognizable.¹

Complainant alleges that the judge was biased against him and in favor of the U.S. Trustee (trustee), and, as a result, ignored the trustee's "illegal and unethical" conduct throughout the adversary proceeding. Specifically, complainant avers that, motivated by bias and favoritism, the judge made a series of improper decisions, including: dismissing complainant's civil rights and discrimination counterclaim; applying rules of discovery to prevent complainant from deposing the trustee; denying complainant a jury trial;

¹ Complainant filed a previous misconduct complaint in which he alleged judicial misconduct in connection with a district judge's handling of his civil case. Then Chief Judge Boudin dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the Judicial Council affirmed the order of dismissal. See Boudin, C.C.J., Order, In Re: Complaint No. 475 (January 2, 2008); and Judicial Council of the First Circuit, Order, In Re: Complaint No. 475 (No. 01-07-90012) (May 6, 2008).

allowing the trustee to call complainant, who was pro se, as a witness during the trial; allowing the trustee's employee to testify at trial; and denying complainant's motion to dismiss the adversary proceeding.

The reviewed record, including the misconduct complaint, the docket of the proceeding, and the court's orders, provides no evidence in support of complainant's allegations of bias or other judicial wrongdoing. The record indicates that the trustee commenced an adversary proceeding alleging that complainant had engaged in the unauthorized practice of law. Complainant filed an answer and a counterclaim, in which he requested a jury trial and alleged, in part, that the trustee was discriminating against complainant based on his race and nationality by bringing the adversary proceeding. The trustee moved to dismiss the counterclaim for failure to state a claim upon which relief could be granted and because complainant lacked standing. The judge held a hearing on the motion to dismiss, granted the motion for the reasons set forth by the trustee in his motion, and denied complainant's request for a jury trial.

The judge held a hearing on complainant's motion to compel the production of documents, and granted the motion in part, ordering the trustee to produce any written complaints alleging that the trustee had discriminated against others. The judge also held a hearing on complainant's motions to compel a deposition of the trustee and for reconsideration of his jury trial demand at which the court denied the motion for reconsideration, explaining that complainant did not have a right to a jury trial with regard to the trustee's claims. With respect to the motion to compel, the judge ordered complainant to submit a brief outlining the extraordinary circumstances warranting the

trustee's deposition. At the continued hearing on this issue, the judge denied the motion to compel, finding that complainant had not met his burden to establish that the trustee had firsthand information that could not be obtained from other witnesses or by other means of discovery.

The record further reflects that complainant moved to dismiss the adversary proceeding on the grounds that the trustee had failed to properly serve complainant with notice of a motion for discharge in the underlying bankruptcy case. The judge denied the motion, reasoning that the ministerial act of closing the underlying case did not impact either complainant's rights in or the court's jurisdiction over the adversary proceeding. After granting continuances requested by both parties, the court held a bench trial at which complainant presented opening and closing arguments, and cross-examined the trustee's witnesses. Noting that the trustee had listed complainant as a witness in the pretrial memorandum, the court allowed the trustee to call complainant to testify, over complainant's objection. Thereafter, the judge issued a lengthy opinion finding, in part, that complainant had engaged in the unauthorized practice of law and in fraudulent, unfair, and deceptive acts.

Neither the complaint nor the record of the proceeding contains any facts supporting complainant's allegations that the judge was biased against complainant or in favor of the trustee. On the contrary, the lengthy docket reflects that the judge considered the merits of complainant's many motions, at times ruling in his favor, and held multiple hearings, as well as a trial, during which, according to the lengthy trial transcript, complainant presented arguments and cross-examined witnesses, and the judge patiently

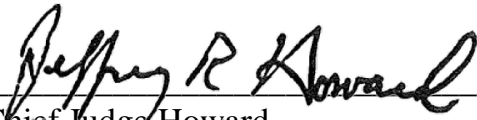
fielded dozens of objections from complainant. In the lengthy, detailed opinion, the judge outlined the facts of the case and carefully explained the reasons for the court's rulings.

Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Where, as here, there is no evidence of bias or improper judicial motive, complainant's objections to the substance of the judge's rulings - including the dismissal of complainant's counterclaim, denial of complainant's motion to dismiss and request for a jury trial, and orders and rulings regarding discovery and testimony - 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."). 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. 01-20-90008 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).

January 20, 2021
Date



Chief Judge Howard