

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90014

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MAY 24, 2021

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 his civil case over which the judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant levies allegations of conspiracy and other wrongdoing against the judge, including that the judge illegally dismissed two government officials who were defendants in the case, both in order "to aid and abet" the second defendant in "defrauding" complainant and others. Complainant adds that the judge used the order dismissing the first defendant to commit wire fraud.

Complainant further asserts that the judge made a "false ruling" when issuing an order denying complainant's motion for an emergency hearing. Complainant also alleges that, in order to benefit the second defendant, the judge directed a magistrate judge to

"deny [complainant] honest services," to rule that venue was improper, and to decline to transfer complainant's case erroneously.¹ Complainant contends that the judge "aid[ed] and abett[ed]" criminal activity by failing to notify law enforcement of a crime alleged in his civil complaint. Finally, complainant asserts that the judge directed court staff not to respond to complainant's inquiries and that the judge should have recused from his case. Complainant requests that the judge recuse and that the case be transferred to a different district.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including the recusal of a judge or the transfer of a case to another district. 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 docket of the underlying proceeding, and the court's orders, provides no support for complainant's allegations of conspiracy, improper motive, or other wrongdoing. The record indicates that complainant filed pro se a voluminous civil complaint against numerous private and government defendants, alleging, in part, criminal activity and fraud. Complainant filed a motion to amend his complaint, which included the second defendant in the motion caption, and a motion requesting that the court forward a copy of his civil complaint, which included criminal allegations, to law enforcement. Subsequently, complainant filed

¹ Complainant includes allegations against other First Circuit judges. As he did not identify them as subjects of the complaint, these allegations are not addressed. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rules 1, 3(h), and 6.

a letter complaining that court staff would not provide him with a summons for the second defendant.

Thereafter, complainant filed a voluminous amended complaint, excluding the first defendant and adding the second defendant, and the court issued a summons for the second defendant. A number of defendants filed motions to dismiss on various grounds, including, but not limited to, improper venue.

Court staff, on behalf of the subject judge, issued an order to show cause why the case should not be dismissed against certain defendants, including the first defendant, for failure to complete service. Complainant filed a motion for an emergency hearing, explaining that he had filed an amended complaint that excluded the defendants who had not been served. The judge withdrew the order to show cause in light of the amended complaint and denied the request for an emergency hearing.

A magistrate judge issued a multiple-page report and recommendation, explaining that venue was improper and that complainant failed to serve the second defendant properly, and recommending that the case be dismissed without prejudice, as the interest of justice would not be served in transferring the case to another district in part because the civil complaint did not comply with the applicable pleading requirements.

Complainant objected to the report and recommendation, as did a number of the defendants, who argued that the case should be dismissed with prejudice. Complainant included, in his objection to the report and recommendation, motions for the judge's recusal and to transfer the case, and filed a motion for entry of default with respect to the

second defendant. The judge accepted the magistrate judge's recommendation to dismiss the case, and did so against some defendants with prejudice and against others, including the second defendant, without prejudice (noting the absence of personal jurisdiction), and denied all pending motions as moot.²

Complainant provides, and the record reveals, no evidence to support the allegations that the judge engaged in conspiracy, or in any other illegal or improper behavior in presiding over complainant's case. In accepting the magistrate judge's recommendation, the judge dismissed the case against the second defendant without prejudice and for the reasons provided on the record. See supra pp. 3- 4. Further, complainant voluntarily removed the first defendant from the case. See supra p. 3. There are also no facts in the record to support the claim that the subject judge directed the magistrate judge to issue an erroneous report and recommendation or otherwise to mishandle the proceeding. Nor is there any basis for complainant's conclusory allegation that the judge directed court staff not to provide information to complainant.³ 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).

² These motions include, but are not limited to, complainant's motions to amend his complaint, to forward his complaint to law enforcement, to transfer his case, for the judge's recusal, and for entry of default. Subsequent to the judge's dismissal of the case, complainant filed two motions seeking various relief from judgment, both of which the court denied. Complainant filed an objection to the court's order denying the motions for relief from judgment, and the judge denied the objection, explained that complainant had filed numerous frivolous filings, and warned that further such filings would result in an order restricting complainant from making additional filings in the case.

³ Despite complainant's letter alleging that court staff refused to provide him with a summons for the second defendant, the record indicates that the court promptly did so after complainant included him in the amended complaint. See supra p. 3. Further, the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7.

As there is no evidence of improper motive, complainant's objections to the judge's rulings, including but not limited to the order denying the motion for an emergency hearing and the show cause order, 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 as not cognizable, 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, the misconduct complaint 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).

May 24, 2021
Date


Chief Judge Howard