

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-20-90015

---

BEFORE  
Howard, Chief Circuit Judge

---

ORDER

ENTERED: JUNE 8, 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 in connection with complainant's employment discrimination case over which the judge presided.<sup>1</sup> The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge was biased in favor of defendant and violated complainant's Constitutional and other rights. Repeating some allegations from his previous misconduct complaint, see supra note 1, complainant asserts that the judge acted as a "defen[s]e attorney[,] " held a "SHAM trial[,] " and denied "each [and] every" one of complainant's discovery motions, as well as his motions to reopen the case, to access a

---

<sup>1</sup> This is complainant's second misconduct complaint. In his first misconduct complaint, complainant alleged that the same district judge who is the subject of the instant complaint and a magistrate judge engaged in judicial misconduct in presiding over the same case that is at issue in the present matter. See Judicial Misconduct Complaint Nos. 01-14-90022 and 01-14-90023. Then Chief Judge Lynch dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-14-90022 and 01-14-90023 (May 7, 2015).

specific document (allegedly containing key evidence supporting his claims), to amend his complaint, and for a trial, in order "to back up defendant's wrongdoing" and to dismiss the case. Complainant contends that the judge was aware that defendant had tampered with the document to which complainant requested access and cooperated with defendant to "secretly [move] the case forward" (by failing to provide complainant with defendant's opposition to a motion that complainant filed to reopen the case and the judge's order denying the motion).

Complainant further seems to suggest that it was improper for the judge to indicate that complainant was not enjoined from submitting further filings in the order denying complainant's motion to reopen the case. Contending that the judge's "mind [changed] often," complainant concludes that the judge did not engage in the "[f]air and equal administration of the law." Complainant observes that, after first dismissing the complaint, the judge partially granted complainant's motion for reconsideration when complainant filed an appeal and that the judge stated that the court would make available at trial the document at issue, but then dismissed the case without a trial.

The record, including the misconduct complaint and the docket and orders in the underlying proceeding, offers no support for complainant's claims that the judge engaged in wrongdoing. According to the record, complainant filed, pro se, an employment discrimination case against two defendants in state court, which defendants removed to federal court and moved to dismiss. At the conclusion of a hearing on the motions, the judge dismissed the case against both defendants; with respect to one defendant, the court

dismissed the case, in part, for failure to state a claim that it had an employment relationship with complainant. Complainant sought reconsideration of and appealed the order of dismissal. The judge granted in part the motion for reconsideration and reinstated certain claims against one defendant.

Over the course of the next year, complainant filed a series of motions to compel discovery, a number of which concerned access to the relevant document, and the judge denied all but one of the motions on various grounds, including, but not limited to, complainant's failure to file mandatory disclosures and mootness, as discovery had been produced; the court granted one motion in part and ordered the production of the document. After defendant objected to the court's order to produce the document on the ground that it contained confidential information, the judge reviewed the document in camera, and determined that it appeared to contain nothing of relevance and would be provided to the parties during the trial for examination of witnesses.

Thereafter, the judge held a hearing on defendant's motion for summary judgment, at the conclusion of which the judge issued an oral order granting summary judgment, but allowing complainant an opportunity to present any additional information that might persuade the judge to change the ruling. After complainant appealed and notified the court that he would not be submitting additional evidence, the judge allowed the summary judgment motion so that the appeal could be perfected and issued a multiple-page written memorandum of decision, granting summary judgment to defendant on

various grounds, including that the civil complaint failed as a matter of law, was factually unsupported, and failed to raise a genuine issue of material fact.<sup>2</sup>

A number of years later, complainant filed a motion for reconsideration of the order granting summary judgment, asserting that he had evidence that defendant had tampered with the document at issue in the proceeding. Considering the motion as one to vacate the judgment, the judge denied it without prejudice to renewal if supported by evidence and proper service on defendant. Complainant requested reconsideration of this order, which the court denied, but in doing so, explicitly declined to grant defendant's request to enjoin complainant from further filings.

Several weeks later, complainant filed a notice with the court stating that he had not received notice that defendant had opposed his motion for reconsideration or that the court had ruled on the motion until he called the court. The judge vacated the order denying the motion to reconsider and allowed complainant an opportunity to respond to defendant's opposition; after considering complainant's response, the court denied the motion.

The misconduct complaint is without merit. There is no evidence that the judge was improperly motivated, exhibited bias in favor of defendant, denied complainant's Constitutional or other rights, or engaged in any other wrongdoing. To the contrary, the record indicates that the judge heard from complainant in full during the lengthy course

---

<sup>2</sup> The Court of Appeals affirmed the judgment of the district court, and complainant filed a petition for writ of certiorari with the Supreme Court, which was denied.

of the proceeding; the court held multiple hearings at which complainant presented his arguments, considered the substance of complainant's claims and defenses in reasoned rulings, some of which were in complainant's favor, and allowed complainant multiple opportunities to provide additional briefing or information. See supra pp. 2-4.

There are likewise no facts suggesting that the judge had knowledge of evidence tampering, as complainant alleges, or otherwise withheld information from complainant in order to aid defendant.<sup>3</sup> Nor is the judge's modification of previous rulings, including dismissing the case on summary judgment after indicating that certain evidence would be available at trial and granting complainant's motion for reconsideration of the order of dismissal, see supra pp. 3-4, indicative of improper motivation. Therefore, the complaint is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Where, as here, there is no evidence of improper judicial motive, complainant's objections to the court's orders — including, but not limited to, orders dismissing the complaint, denying motions for discovery, dismissing the case without a trial, denying complainant's motion to reopen the case, and declining to enjoin complainant from further filings — are not cognizable.<sup>4</sup> See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the

---

<sup>3</sup> Although not necessary to the disposition of the issue, the docket indicates that complainant was sent copies of the relevant pleading and order. Further, any clerical error in this regard, of which there is no evidence, would not be attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015) at p. 7.

<sup>4</sup> Although not necessary to the resolution of the misconduct proceeding, the judge did not deny "each [and] every" one of defendant's discovery motions. See supra p. 3 (judge's order for production of the requested document, over defendant's objection).

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."), and id. Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related."). 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, Complaint No. 01-20-90015 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).

As this is complainant's second baseless misconduct complaint, complainant is warned that the filing of another frivolous or repetitive 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 . . . .").

June 8, 2021  
Date

  
Chief Judge Howard