

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90016

BEFORE
Lynch, Circuit Judge

ORDER

ENTERED: JUNE 21, 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.¹ Complainant alleges that the judge engaged in judicial misconduct in overseeing the conduct of another district judge and in presiding over complainant's civil case. The misconduct complaint is frivolous and is not cognizable.

¹ This is complainant's third misconduct complaint. In complainant's first misconduct complaint, he alleged that a bankruptcy judge in the First Circuit engaged in misconduct in presiding over his bankruptcy case. See Judicial Misconduct Complaint No. 01-13-90012. The misconduct complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(B), and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-13-90012 (October 31, 2013), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90012 (January 16, 2014). In his second misconduct complaint, complainant alleged that the subject judge of the present matter and a magistrate judge in the First Circuit engaged in misconduct in presiding over his civil case. See Judicial Misconduct Complaint Nos. 01-16-90034 and 01-16-90042. Judge Torruella 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), and the Judicial Council affirmed the order of dismissal. See Torruella, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90034 and 01-16-90042 (February 8, 2017), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90034 and 01-16-90042 (November 30, 2017).

Complainant alleges that the subject judge "fail[ed] to adjudicate [the] conduct of" another district judge, and issued an erroneous order denying his motion to withdraw his civil case and "deny[ing] a [s]eal status [that complainant] did not seek." Complainant asserts that he was denied due process when the subject judge "followed" the other district judge in presiding over his civil case, as the judges had "personal biased illicit motives."² Complainant requests that his case be transferred to the district court where he originally filed it and seems to request that the judge recuse from his case.

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(b), and 20(b).

The misconduct complaint is frivolous. There is no information in the misconduct complaint or in the record of the relevant proceeding that supports complainant's allegations of judicial misconduct. According to the record, complainant filed a civil complaint in a federal district court in another circuit, alleging fraud and tax evasion. The court found that venue was improper and ordered sua sponte that the matter be transferred to the First Circuit district court where the parties resided and the relevant events occurred.

² Complainant includes allegations against the other district judge and a number of other First Circuit judges. As complainant did not identify any of these judges 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. Complainant was notified that the complaint was accepted only against the judge that complainant identified as the subject of the complaint.

The case was assigned first to the other district judge who is not the subject of this complaint. See supra p. 2 and note 2. Complainant filed a motion to withdraw the complaint, in which he asserted that the presiding judge had a conflict of interest, and that the case should be sealed and transferred back to the court in which it was originally filed. The judge recused, and the case was assigned to the subject judge.

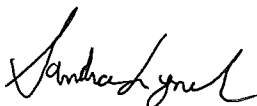
The subject judge denied complainant's request to transfer the case and unsealed the case, explaining that the statute through which complainant sought to seal the matter was inapplicable. The judge also denied without prejudice complainant's request to withdraw the civil complaint, observing that the request was unclear and directing complainant to file a notice of dismissal if he wished to withdraw his case. Complainant filed a pleading in which he stated that he withdrew his case, and the judge deemed the case voluntarily dismissed.

Neither complainant nor the record provides any facts indicating that the subject judge was improperly motivated or engaged in other wrongdoing in presiding over complainant's proceeding. The record demonstrates that the judge endeavored to ensure that complainant intended to voluntarily dismiss his case and provided clear reasoning for the court's rulings. There is likewise no evidence that the judge neglected to take any required action with respect to the other district judge who originally presided over complainant's case. Accordingly, the complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Where, as here, there is no evidence of bias or improper motive, complainant's objections to the judge's order denying his request to withdraw and unsealing his 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 . . . or improper conduct . . . 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)(C).

June 21, 2021
Date



Judge Lynch