

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90017

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 25, 2021

Complainant, a former criminal defendant, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit in connection with complainant's criminal case over which the judge presided. The misconduct complaint is baseless and is not cognizable.¹

Repeating claims from a previous misconduct complaint, see supra note 1, complainant alleges that the judge "abused [the] courtroom by judicial force" by unlawfully "conspir[ing]" to prosecute complainant. Complainant contends that the judge

¹ This is complainant's third misconduct complaint. In 2016, complainant filed a misconduct complaint against the same judge named in the present matter and against a second judge including many of the same claims made here. See Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007. The misconduct complaint was dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, July 18, 2016, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, August 1, 2017. In 2020, complainant filed a misconduct complaint against the second judge, which has been dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Judicial Misconduct Complaint No. 01-20-90010, and Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-20-90010, February 25, 2021.

was "aware" of complainant's innocence and that the court did not have subject matter jurisdiction. Complainant further alleges that, despite knowledge of complainant's innocence, the judge wrongfully ordered complainant to be incarcerated before trial, improperly ordered a competency evaluation by a second psychologist, and issued a legally insufficient order delaying complainant's trial. Complainant also alleges that, after dismissing the indictment, the judge improperly ordered complainant confined on "dangerousness" charges, conspired with another judge to confine him, and "committed a criminal act" by publishing an order on LexisNexis. Finally, complainant requests transfer of the complaint to a different circuit, the appointment of a special committee to review his complaint, and release from custody.²

As a preliminary matter, the judicial misconduct process does not provide an avenue for obtaining relief in a case, including complainant's release from custody. 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. Furthermore, no "exceptional circumstances" exist that would warrant transfer of the complaint to another circuit. See Rules of Judicial-Conduct, Rule 26 (providing that in "exceptional circumstances" a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding). Appointment of a special committee is also not warranted where, as here,

² Complainant includes apparent allegations against Bureau of Prison staff and his court appointed attorney which are not addressed, as the judicial misconduct complaint process only provides an avenue for asserting claims against federal judges. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1(b). Complainant also cites a variety of provisions within the Code of Conduct for United States Judges, but neither alleges nor offers any information indicating that the judge failed to comply with the referenced provisions. As explained, infra pp. 3-6, the record in the present matter offers no indication that the judge violated the Code of Conduct, let alone engaged in misconduct.

the complaint, considered in the context of the record as whole, presents no basis for further investigation. See 28 U.S.C. § 351, et seq. See also Rules of Judicial-Conduct, Commentary on Rule 11 ("[D]ismissal is appropriate 'when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.' 28 U.S.C. § 352(b)(1)(B).").

The reviewed record of the proceeding offers no support for complainant's claim that the judge engaged in any wrongdoing. According to the record, complainant was indicted, and after a detention hearing, another judge ordered complainant detained pending trial because complainant was a danger to the community. The subject judge subsequently allowed the parties' joint motion for an evaluation of complainant's competency to stand trial, and the evaluating psychologist filed an evaluation with the court finding that complainant was competent to stand trial. After a status hearing at which complainant appeared, the judge ordered an additional competency evaluation to be performed by a second psychologist due, in part, to defense counsel's representations regarding his interactions with complainant and the prosecutor's request for an additional evaluation.

At complainant's competency hearing, the two psychologists provided diverging diagnoses and conclusions, and the judge subsequently concluded, on the basis of the psychologists' reports and the court's observations, that complainant suffered from various specified mental diseases or defects rendering him mentally incompetent to assist in his defense and/or to conduct his own defense.

The court postponed complainant's trial a number of times, pending subsequent proceedings to determine whether appropriate treatment might restore complainant's competency. The order which complainant objects to as legally insufficient provided that complainant's trial would be postponed due to a delay in the evaluator's submission of the competency evaluation, and that the ends of justice served by a continuance outweighed the best interest of the public and the defendant in a speedy trial. When the evaluation was not timely filed, the judge ordered that it be filed as soon as medically practicable, and the evaluator filed the report. The judge also denied, in a multiple-page order, a motion that complainant filed challenging the indictment.

After a restoration of competency hearing, the court found that complainant's mental condition had not improved sufficiently to allow the trial to proceed, and that, based upon expert testimony and the recently completed evaluation, complainant could not be restored to competency in the foreseeable future. The court ordered complainant's continued detention pending an assessment for dangerousness and encouraged the Attorney General to complete the risk assessment as soon as possible given the duration of complainant's pretrial detention. The court ultimately dismissed the indictment.

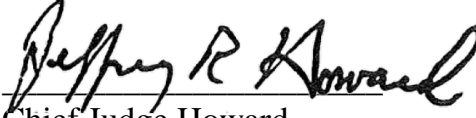
There is no evidence in support of complainant's claims that the judge engaged in conspiracy to prosecute or to detain complainant, let alone did so despite knowledge of complainant's innocence or in the absence of jurisdiction. Nor is there any information suggesting that the judge was otherwise biased or improperly motivated in presiding over complainant's case. To the contrary, the record indicates that the judge held multiple

hearings, considered the substance of complainant's claims and defenses, and issued extensive, reasoned rulings based on the record before the court. See supra pp. 3-4. Further, the appearance of an unpublished order on LexisNexis is neither attributable to the judge nor indicative of misconduct. 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 challenges to the court's orders - including, the orders for psychological evaluation, postponing the trial, finding complainant incompetent, mandating his detention, and dismissing the indictment and associated jurisdictional claims - 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."); 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 claims against the judge are 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 above, 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), respectively.

February 25, 2021
Date


Chief Judge Howard

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90017

BEFORE
Howard, Chief Circuit Judge

SHOW CAUSE ORDER

ENTERED: FEBRUARY 25, 2021

You have now filed three judicial misconduct complaints, each of which has been found to be patently without merit. These complaints are Nos. 01-16-90006 and 01-16-90007;¹ 01-20-90010; and 01-20-90017.

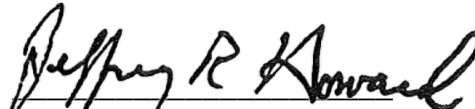
Pursuant to the order of delegation issued by the Judicial Council on May 4, 2016 and Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), you are directed to show cause why an order should not be entered by the Judicial Council precluding you from filing any new judicial misconduct complaints without prior permission of the Judicial Council. If you oppose such an order, you must file a written opposition with the Office of the Circuit Executive, John Joseph

¹ Complaint Nos. 01-16-90006 -- 01-16-90007 was filed against two judges. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 8(a); and id. Commentary on Rule 8 (providing for "separate docket numbers for each subject judge.").

Moakley United States Courthouse, 1 Courthouse Way, Suite 3700, Boston,
Massachusetts 02210, which must be received within 42 days of the date of this order.

Until this show cause proceeding is resolved, any new judicial misconduct complaint that you file will be held in abeyance. If an order of preclusion is entered, any such new complaint will be returned to you without prejudice to your right to resubmit it after obtaining prior permission from the Judicial Council. This order does not affect your rights under the Rules of Judicial-Conduct in any pending matters.

February 25, 2021
Date


Chief Judge Howard