

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90018

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JUNE 22, 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 frivolous and is not cognizable.

Complainant alleges that the judge is "compromised" and that the judge's "personal interest" interfered with the court's handling of his case. Complainant asserts that the judge was "compelled to delay ruling" or to rule "prejudicially," "adversely," and/or "illegally" in his case in exchange for a "favor."¹ Complainant requests that the judge recuse from complainant's case and that the Attorney General investigate the alleged judicial impropriety.

¹ Complainant lists provisions of the American Bar Association Model Code of Judicial Conduct, but neither alleges nor offers information indicating that the judge failed to comply with the referenced provisions. Further, the Code of Conduct for United States Judges applies to federal judges.

As an initial matter, the judicial misconduct procedure does not provide for the recusal of a judge or an investigation by the Attorney General. 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).

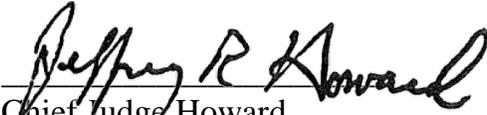
The reviewed record, including the misconduct complaint and the docket of the relevant proceeding, provides no basis for complainant's conclusory allegations of judicial misconduct. According to the record, complainant filed a pro se civil case against numerous private and government defendants, alleging identity theft and fraud. Complainant filed a motion to proceed without fees or costs, which the court granted to the extent complainant sought waiver of the filing fee. Complainant also filed a motion to waive costs for service of process on certain defendants and, thereafter, filed a pleading in which he asserted that the court had delayed in ruling on the motion and requesting that it be expedited. A magistrate judge denied this motion without prejudice, explaining that the court had not yet determined whether service would be directed to any defendants.

Complainant also filed a motion requesting an order to show cause why the judge should not recuse from the case, which the judge denied on the ground that complainant failed to present any proper basis for recusal. Further, complainant filed a motion to dismiss the case against a number of defendants, which the judge granted. Upon the report and recommendation of the magistrate judge, the subject judge dismissed complainant's case without prejudice because of improper venue.

Complainant has offered and the record contains no facts to support the conclusory allegations that the judge was improperly motivated or engaged in any wrongdoing in presiding over complainant's case. Where, as here, there is no evidence of improper motive, complainant's allegations of delay are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision"), and Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge"). Accordingly, the misconduct complaint is dismissed as frivolous and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

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 22, 2021
Date


Chief Judge Howard