

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-21-90007

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: MARCH 10, 2022

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 foreclosure proceeding over which the judge presided.¹ The misconduct complaint is frivolous and is not cognizable.

¹ This is complainant's fourth misconduct complaint, and the second in connection with the same underlying litigation. In his first misconduct complaint, complainant alleged that a different district judge and a magistrate judge engaged in misconduct in connection with a different proceeding. See Judicial Misconduct Complaint No. 137. Then Chief Judge Breyer dismissed the misconduct complaint as "directly related to the merits of decisions or procedural rulings," as "frivolous," and as "not in conformity with the statutory definition of misconduct," pursuant to 28 U.S.C. §§ 372(c)(3)(A)(i), (ii), and (iii) (current version at 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii)), and the First Circuit Judicial Council affirmed the order of dismissal. See Breyer, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 137, March 15, 1993, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 137, October 28, 1994. In his second misconduct complaint, complainant, along with a number of others, alleged that the district judge who is the subject of the instant complaint engaged in misconduct in connection with a criminal proceeding to which complainant was not a party. See Judicial Misconduct Complaint No. 445. Then Chief Judge Boudin dismissed the complaint as "wholly duplicative" and as "frivolous," pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i) and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Boudin, C.C.J., Orders, In Re: Judicial Misconduct Complaint No. 445, February 1, 2007 and April 5, 2007, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 445, July 9, 2007. Complainant filed a third misconduct complaint, alleging that the subject judge of the instant complaint engaged in misconduct while presiding over the same litigation at issue in the present matter. See Judicial Misconduct Complaint No. 450. Then Chief Judge Boudin dismissed the misconduct complaint as baseless, as not cognizable, and as frivolous, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Boudin, C.C.J., Order, In Re:

Repeating allegations from his last misconduct complaint, see supra note 1, complainant alleges that the judge "lawlessly" and "without evidence or trial" ordered the foreclosure and sale of complainant's property at auction, in reliance on an Internal Revenue Service (IRS) attorney's "false and fraudulent" assessment of the property's value, and "orchestrated [complainant's] eviction" in a "conspiracy" with the IRS attorney. Contending that the judge was "motiv[ated by] vengeance" because complainant had "criticized" the judge for "an earlier misjudgment[,]" complainant asserts that the judge should have recused from the case. Complainant apparently argues that, since the price for which his property sold at auction did not cover his alleged "tax arrears[,] . . . the property was sold for no known reason except for malice"

Complainant repeats an unrelated allegation from his last complaint that he "believes" that the judge was "involved" in the murder of a state judge. Complainant requests that the judge "reverse" the court's orders issued in complainant's case, return complainant's property, be removed from office, "seriously penalized fiscally," and "possibly banished" from the United States.²

As a preliminary matter, the judicial misconduct complaint process does not provide for much of complainant's requested relief, including the removal of a judge,

Judicial Misconduct Complaint No. 450, April 26, 2007. Complainant did not seek Judicial Council review of this order of dismissal.

² Complainant also contends that a different district judge engaged in misconduct, but does not identify that judge as a subject of the complaint or include specific allegations against that judge. Accordingly, the complaint was accepted only against the subject judge. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 1, 3(h), and 6(b). Complainant additionally includes allegations against other individuals including, but not limited to, federal marshals, a federal "agent," an IRS attorney, and "a tax court judge," which are not addressed, as the judicial misconduct complaint process provides an avenue for bringing complaints against current federal judges only. See 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rule 1(b).

where, as here, the allegations are unsubstantiated. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b).

The record, including complainant's current and previous misconduct complaints (Judicial Misconduct Complaint No. 450) and the docket of the relevant proceeding, is devoid of any information suggesting that the judge was biased or improperly motivated, or engaged in any other wrongdoing.³ The reviewed record indicates that, over twenty years ago, the judge allowed the government's motion for summary judgment and entered judgment for the government in complainant's foreclosure proceeding. Complainant filed a motion for reconsideration of the order granting summary judgment and for the judge's recusal, and the judge denied these motions.

Subsequently, the government filed a motion for an order requiring complainant to vacate the premises and for foreclosure of the property, which the court granted, over complainant's objection. The Court of Appeals affirmed the district court's judgment for the government, as well as subsequent orders that the district court issued on a number of motions filed by the parties.

³ The allegations raised in the misconduct complaint concern a case that has been closed for approximately two decades. While not determinative of the present matter, such delayed allegations, that depend upon events occurring years ago, prejudice the ability to conduct any meaningful investigation. See Boudin, C.C.J., Order, In re: Complaint No. 400, March 3, 2005, at pp. 2-3 (dismissing a judicial misconduct complaint alleging failure to report attorney misconduct, filed nearly eight years after the issue of attorney misconduct was first raised in the underlying case); and Rules of Judicial-Conduct, Rule 9 (Where "the passage of time has made an accurate and fair investigation of a complaint impracticable, the complaint must be dismissed . . .").


The misconduct complaint is simply another attempt by complainant to reassert his disagreement with the judge's rulings in a case that has been fully and finally terminated for nearly two decades. Complainant provides no information to undermine the previous order dismissing the same baseless allegations of judicial misconduct. See supra note 1, Neither the complaint nor the record contains any facts to support complainant's conclusory allegations that the judge conspired against complainant, was improperly motivated in denying complainant's motion for recusal, or disregarded the law in ordering the foreclosure of his property. Complainant's claim that the judge was somehow involved in alleged criminal activity is likewise presented with no basis in fact. Consequently, the complaint is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

As there is no evidence of improper motive, complainant's objections to the judge's orders issued in the case, including the denial of complainant's motion for recusal and the order to vacate and for foreclosure, 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, including a failure to recuse. 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."). Accordingly, the complaint is dismissed 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)(C).

March 10, 2022

Date


Chief Judge Howard