

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-21-90019, 01-21-90020, and 01-21-90021

BEFORE  
Kayatta, Circuit Judge

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ORDER

ENTERED: JANUARY 5, 2023

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against three appellate judges in the First Circuit. Complainant alleges judicial misconduct in connection with his appeal from a civil case. As this opinion will explain, for three principal reasons the complaint is dismissed as frivolous and not cognizable. First, much of the relief sought (such as, for example, access to medical records) is not even available in a proceeding such as this. Second, the fact that a judge has decided a case against a person, even in error, does not mean that judicial wrongdoing has occurred. Third, a successful complaint must be based on actual evidence of wrongdoing, not speculation and mere allegations. Here there is no evidence at all that the judges in question did anything other than decide the merits of the case before them based on the record before them.

Complainant alleges that the circuit judges discriminated against him due to his economic and pro se status. Complainant asserts that the court's judgment contradicted a prior order of the court in an unrelated case allowing an application to proceed in forma

pauperis (IFP) and that, contrary to the court's order, he did not fail to address specifics of the district court IFP ruling, having filed arguments "to the best of [his] knowledge and belief." Complainant seems to allege that the court should have ruled in his favor because appellees "fail[ed] to respond to" complainant's brief and because "[a]ll parties acknowledged [j]udicial errors" in the district court. Complainant further asserts that the judges failed to rule on a motion to recuse and have a conflict of interest based on their "personal relationships" with appellees. Complainant also alleges that the judges committed crimes, violated complainant's due process rights, and forged court documents.

Complainant requests "federal and state probes" of the judges' "mental and physical disabilities," access to the judges' medical records, and review of the orders entered in complainant's appeal to determine their "authenticity."<sup>1</sup>

As an initial matter, the judicial misconduct complaint procedure does not on the present record provide for complainant's requested relief. Under the governing procedures, the chief judge (or next most senior active circuit judge),<sup>2</sup> conducts the initial review of a judicial misconduct complaint. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11. Further, the judicial misconduct complaint procedure does not provide for the release

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<sup>1</sup> Complainant also includes allegations against court staff. The governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against current federal judges only. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h). Nonetheless, complainant's unclear and unsupported assertion - that court staff "failed to issue merits" in complainant's favor - would not indicate that staff engaged in misconduct in connection with complainant's appeal.

<sup>2</sup> See Rules of Judicial-Conduct, Rule 11(a).

of judges' medical records. See id. and Rules of Judicial-Conduct, 19(b) and 20(b). Nor does complainant provide any factual basis for questioning the authenticity of the court's orders. See supra p. 2.

The reviewed record, including the misconduct complaint and the record of the relevant proceeding, provides no basis for complainant's conclusory allegations of judicial wrongdoing. According to the record, complainant filed an appeal pro se of an order denying his renewed motion for leave to proceed IFP in a civil case that he had filed in the district court. In its order, the district court had explained that complainant's renewed application did not address the deficiencies outlined in its previous order denying his original motion to proceed in forma pauperis. The Court of Appeals issued a judgment, finding that complainant failed to address the specifics of the district court's ruling and affirming the district court's denial of complainant's motion to proceed IFP substantially for the reasons cited by the district court in its order.

The misconduct complaint is baseless. There is no information suggesting that the judges discriminated against complainant, committed crimes or due process violations, failed to rule on a motion to recuse,<sup>3</sup> forged court documents, or engaged in any other wrongdoing. Complainant's contention that the judges harbored a conflict of interest, based on "personal relationships" with appellees or for any other reason, is equally unsupported. The record demonstrates that the judges considered the merits of complainant's appeal with respect to the only order at issue and provided the basis for the

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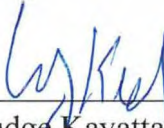
<sup>3</sup> The docket of the appeal does not indicate that complainant filed a recusal motion.

court's ruling. 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 improper judicial motive or other wrongdoing, complainant's objection to the court's judgment affirming the district court's denial of his IFP motion is 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."); 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 Nos. 01-21-90019, 01-21-90020, and 01-21-90021 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).

1-5-23  
Date

  
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Judge Kayatta