

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90007

BEFORE
Lynch, Circuit Judge

ORDER

ENTERED: SEPTEMBER 12, 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. Complainant alleges judicial misconduct in connection with his civil matter over which the district judge presided. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge should have recused from complainant's civil action filed against an educational institution because of the judge's "close relationship" with defendant, which includes graduating from the institution, serving as a member of defendant's management board and its alumni committee, and receiving "monetary and [] or nonmonetary" compensation as a teacher at the institution. Complainant further alleges that the judge "regularly meets" with defendant's counsel. Complainant asserts that the judge "actively hid" the judge's relationship with defendant in order to "maintain a silent conspiracy" with and to "protect" defendant.

Complainant further alleges that the judge "was not an independent, fair, or impartial decision-maker," that the judge "actively discriminated against [complainant, a p]ro [s]e litigant," engaged in "prejudiced," disgraceful," and "discriminat[ory]" treatment of complainant during a hearing on defendant's motion to dismiss, and violated "every single Code of Conduct and ethics for United States judges." Complainant asserts that, at the hearing, the judge engaged in "abusive and harassing behavior," "took the place of [defendant's] own attorney and argued for [defendant]," when the court sua sponte dismissed two of complainant's claims as time-barred, and "ignored relevant facts" that complainant presented, including defendant's submission of documents that were "not authentic."

Complainant additionally alleges that the judge's statement that the court had reviewed complainant's pleadings was a "lie[]," as the judge indicated ignorance of one of complainant's claims. Complainant contends that the judge failed to address complainant's motion to amend his complaint in order "protect" defendant. Complainant also asserts that the judge stated, "at the outset of the hearing[,] . . . that [defendant] had already [won] the motion[,] . . . interrupt[ed]" complainant during the hearing, and did not provide complainant with adequate time to address the court. Finally, complainant objects to the brevity of the judge's order of dismissal.

The reviewed record (including the misconduct complaint and attachments, the docket of the relevant proceeding, and the transcript of the referenced hearing) and other available information provide no basis for complainant's allegations that the judge has a

relationship with defendant that warranted the judge's recusal from complainant's case, conspired with defendant to conceal this relationship, was biased or improperly motivated, or otherwise engaged in misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) (authorizing the judge reviewing a complaint to conduct a limited inquiry).

According to the record, complaint filed pro se a civil case against defendant in state court. Defendant removed the case to federal district court and filed a motion to dismiss for failure to state a claim upon which relief can be granted and a supporting memorandum. The court allowed complainant's request to file electronically and for additional time to respond to defendant's motion to dismiss. Complainant filed an opposition to the motion to dismiss, a request to file an amended complaint, to which defendant objected, and an amended complaint. Subsequently, complainant filed a motion to file a sur-reply in support of his opposition to the motion to dismiss, which the judge granted.

The judge held a hearing on the motion to dismiss, at the beginning of which the judge explained that the court attends equally to the arguments of pro se litigants and counseled parties, and that, based on a careful review of the pleadings, it appeared that defendant's arguments were stronger than complainant's, but that the court was interested to hear from both parties. The judge recommended that complainant obtain counsel, and complainant responded that he wished to proceed pro se. After the judge indicated that each party would be allotted the same amount of time for argument, complainant

suggested that he may need additional time, and the judge enlarged complainant's time for argument.

Complainant presented his arguments in opposition to the motion to dismiss, during which he repeatedly asserted that defendant had provided falsified documents to the court. The judge requested clarification on a number of complainant's points, including whether certain claims were barred by the statute of limitations, explained the applicable legal standard for a motion to dismiss, repeatedly reminded complainant of the amount of time he had left to present, and explained that certain of complainant's arguments and claims could not survive the motion to dismiss. At one point, the judge questioned whether there was a state law claim before the court, complainant answered that there was, and the judge agreed.

Arguing in support of the motion to dismiss, defendant's counsel maintained that there was not a good faith dispute regarding the authenticity of the documents defendant had provided, and the judge questioned defendant about the statute of limitations. After hearing from and questioning both parties, the judge ruled from the bench that the case must be dismissed, providing the reasons for dismissal of each count, including, but not limited to, passage of the statute of limitations, failure to exhaust administrative remedies, and inadequately pled allegations. The following day, the court entered an order of dismissal based on the judge's oral ruling.

The misconduct complaint is without merit. There is no information suggesting that the judge has any current relationship with defendant that would warrant recusal

from the case or that the judge conspired with defendant to conceal this relationship. The limited inquiry demonstrates that the judge has not taught at the defendant institution or held any position on its boards or committees in at least two decades. The only existing relationship, as a member of the institution's alumni association, does not provide grounds for recusal, absent circumstances reasonably calling into question the judge's impartiality, none of which are present in the pending matter. See, e.g., Code of Conduct for U.S. Judges (Code of Conduct), Canon 3(C)(1)¹ (providing grounds for questioning judge's impartiality), and Judicial Conference of the United States, Committee on Codes of Conduct, Compendium of Selected Opinions, § 3.4(b).² Moreover, complainant's claims that the judge sought to conceal a relationship with the defendant and "regularly meets" with defendant's attorneys are wholly unsupported.

¹ A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); and Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules . . ."). In the present matter, there is no indication that the judge violated the Code of Conduct, let alone engaged in misconduct. See supra pp. 4-5 and infra p. 6.

²Although not necessary to resolution of this matter, there is also no indication that the judge contravened the federal disqualification statute, 28 U.S.C. § 455(a), by not recusing sua sponte from complainant's case. See, e.g., Doyle v. Arlington County School Bd., 953 F.2d 100, 103 (4th Cir. 1991) (holding that recusal was not required from case in which judge was former board member of defendant school when judge was no longer on the board when the dispute arose and did not have knowledge of facts or parties involved); and Easley v. University of Michigan Bd. of Regents, et al., 906 F.2d 1143, 1147 (6th Cir. 1990) (holding that judge was not required to recuse from case in which defendant was judge's law school alma mater and with which he had continued affiliations absent evidence judge had extrajudicial information relating to the case or evidence that the judge's impartiality might reasonably be questioned). See also Boudin, C.C.J., Order, In Re: Complaint No. 362 (Dec. 16, 2003) ("Although a violation of the disqualification statute, 28 U.S.C. § 455(a), is not automatically a violation of the Judicial Misconduct statute, conceivably a sufficiently egregious violation, especially if coupled with evidence of bad faith, might in some circumstances rise to the level of judicial misconduct.") (citation omitted)).

The record likewise offers no support for complainant's allegations that the judge was biased, discriminated against complainant, ignored complainant, treated complainant improperly, or otherwise violated the Code of Conduct³ or engaged in any other wrongdoing in presiding over complainant's case. To the contrary, the record demonstrates that the judge provided complainant with multiple opportunities to present his arguments through briefing and at the hearing on the motion to dismiss (including allowing complainant additional argument time), granted several of complainant's motions, provided clear reasons for the dismissal of each of complainant's claims, and consistently treated complainant respectfully. See supra pp. 3-4. Further, the judge's question about the inclusion of one of complainant's claims does not suggest that the judge "lied" about having reviewed the pleadings. See supra p. 4.

In addition, the judge's statement that, based on the briefings, it appeared that defendant had the stronger case in no way indicates bias or other wrongdoing; the record clearly demonstrates the court's commitment to hearing equally from both sides. See supra p. 3; Boudin, C.C.J., Order, In re Judicial Misconduct Complaint No. 444 (January 23, 2007), at pp. 3-4 (citing In re Marisol Martinez-Catala, 129 F.3d 213 (1st Cir. 1997) ("It is well settled that judges are entitled to form views about the merits, and to express them, during the course of the case so long as the judgements rest on the evidence and arguments in the proceeding itself Leaving aside extraordinary circumstances, the expression of views by the judge on the merits . . . [does not] constitute bias.")).

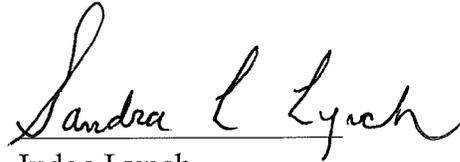
³ See supra note 1.

Therefore, the complaint is dismissed as unsupported, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D), and 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).").

As there is no evidence of bias, improper judicial motive, or other wrongdoing, complainant's objections to the substance of the court's decisions, including the dismissal of the case (without ruling on complainant's motion to file an amended complaint), as well as the judge's presiding over the matter, 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 . . . 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 No. 01-22-90007 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D).

9/12/2022
Date


Judge Lynch