

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-22-90013

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: MAY 26, 2023

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Complainant, a formerly incarcerated pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges that the judge engaged in judicial misconduct in presiding over his civil proceeding. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge used "sarcastic," "derogatory," and "flippant" language in a memorandum and order that, in part, ordered complainant to show cause why his case should not be dismissed, when the judge stated that complainant had alleged that he was injured in prison, although complainant had not specified in his civil complaint where his injury had occurred. Complainant asserts that, in making this "unnecessary" statement, the judge "supplant[ed]" the facts on the record with the court's own "fact[s]," indicating bias and "animus" toward complainant. Complainant further alleges that the judge's statement "color[ed the judge's] deliberations," was evidence of the judge's "predisposition" toward defendant, "create[d] reasonable doubt concerning the judge's impartiality in the mind of any reasonable person," and "diminish[ed] and

discount[ed]" complainant's injury. Complainant concludes that the judge's memorandum and order indicates a "propen[s]ity to dismiss" prisoner claims.

The reviewed record, including the misconduct complaint and the docket of the relevant proceeding, provides no evidence to support complainant's allegations of judicial wrongdoing. Complainant, while incarcerated, filed a pro se civil complaint alleging that defendant was responsible for complainant's injury. On the same day he filed his civil complaint, complainant filed a motion for appointment of counsel, a motion for leave to proceed in forma pauperis (IFP), and a motion to appoint a special process server, and subsequently, a motion to correct a docketing error.

The judge issued a multiple-page memorandum and order explaining that complainant alleged that defendant was responsible for complainant's injury in prison, granting complainant's motion to proceed IFP and motion to correct a docketing error (in part), and denying complainant's motions for appointment of counsel and for a special process server. In the memorandum and order, the judge explained that, because complainant was proceeding IFP, the court must dismiss the case sua sponte if it lacked subject matter jurisdiction; outlined in detail the legal reasons why it appeared that the court lacked jurisdiction; and directed complainant to show cause why the case should not be dismissed for lack of jurisdiction. After complainant responded to the order to show cause, the judge dismissed the case for lack of subject matter jurisdiction in a detailed, multiple-page memorandum and order.

The complaint is meritless. The judge's memorandum and order contains no "sarcastic" or otherwise inappropriate language; nor is it suggestive of bias, lack of impartiality, or judicial animus. The judge recounted complainant's allegations, explained why it appeared that the court did not have subject matter jurisdiction over complainant's case, provided complainant an opportunity to demonstrate why the case should not be dismissed, and identified the grounds for the court's rulings, some of which were in complainant's favor. See supra p. 2. The judge's reference to complainant's location (in prison) at the time of his alleged injury does not indicate that the judge "supplanted" facts from the record or engaged in any other wrongdoing. Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Where, as here, there is no evidence of bias, judicial animus, or improper motive, complainant's objections to the judge's memorandum and order 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."), and 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. 01-22-90013 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D).

May 26, 2023

Date

  
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Chief Judge Barron