

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90018

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: MAY 12, 2023

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 that the judge engaged in judicial misconduct in presiding over complainant's civil rights case. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge was not impartial and discriminated against complainant and her co-plaintiff (collectively plaintiffs), based on their "ethnicity and background," in presiding over and dismissing their civil rights case. Complainant further alleges that "every order that [the judge issued] was meant to be a roadblock to actively keep [plaintiffs] from pursuing justice against [] defendants." Specifically, complainant asserts that, although proof of service on defendants was provided to the court, the judge requested additional proof and determined that such proof, including completed "USM-285 forms" (hereinafter referred to as "returned summons") and affidavits, was "insufficient." Complainant further alleges that the judge was "prejudice[d]" in

dismissing the case as the judge did so "without explaining what [the court] was looking for or why . . . the summons[es]" were being "question[ed]."

The reviewed record, including the misconduct complaint and the docket of the proceeding, provides no evidence to support complainant's allegations of judicial misconduct. According to the record, plaintiffs filed pro se a civil rights case against a local government agency. Plaintiffs filed motions to proceed in forma pauperis (IFP) and an amended complaint naming four employees of the organization as the defendants. A district judge who is not the subject judge of the present complaint allowed the motions to proceed IFP and informed plaintiffs that they could elect to have service completed by the U.S. Marshals Service (USMS). After timely service was not made, the judge entered a conditional order of dismissal providing additional time to produce proof of service or to show cause why service had not been made, and, after plaintiffs did not respond, dismissed the case without prejudice.

A number of months later, complainant filed a motion to reopen the case and the judge granted the motion and ordered plaintiffs to serve defendants within a specified number of days. Executed returned summonses with the original complaint attached were docketed for two defendants (defendants 1 and 2), and, at co-plaintiff's request, the judge extended the time to complete service on the remaining two defendants (defendants 3 and 4).

Subsequently, the case was reassigned to the subject judge. An executed returned summons indicating that untimely service was made on defendant 3, without any

indication of whether the original or amended complaint was served, and an unexecuted returned summons for defendant 4 were docketed.

Approximately a month later, the judge entered an order stating that there had been no action in the case and directing plaintiffs to show cause why the case should not be dismissed. Plaintiffs filed a motion for entry of default against defendants 1 and 2, and the judge denied the motion without prejudice, explaining that: (1) it appeared that service on defendants 1, 2, and 3 was incomplete, as it was unclear whether the amended complaint had been served; (2) service on defendant 3 was untimely; and (3) there was no proof of service for defendant 4. The judge directed plaintiffs to: (1) either file an affidavit clarifying whether the amended complaint had been served on defendants 1 and 2 or serve them with the amended complaint; (2) confirm whether the amended complaint was served on defendant 3 and show good cause as to why service on defendant 3 was untimely; and (3) either file proof of service on defendant 4 or show good cause as to why defendant 4 had not been served, or orders of dismissal would be entered against the respective defendants. Plaintiffs filed copies of the previously docketed returned summons for each defendant, see supra pp. 2-3, and the judge dismissed the action without prejudice explaining that plaintiffs failed to comply with the court's orders regarding service.

Co-plaintiff filed a motion for reconsideration, with an affidavit stating that the amended complaint was served on defendants 1, 2, and 3, and plaintiffs filed a motion to reopen the case and a motion for clarification, all of which the judge denied, explaining,

inter alia, that plaintiffs had been provided multiple opportunities to serve defendants properly, as well as clear directions on how to do so, and had included contradictory statements in their affidavits concerning service of the original or amended complaint.

The complaint is meritless. There is no support for complainant's allegations that the judge discriminated against plaintiffs, based on their ethnicity or for any other reason, issued orders intended to prevent plaintiffs from "pursuing justice," or was otherwise prejudiced or improperly motivated in dismissing the case. Contrary to complainant's assertions, the record indicates that plaintiffs were provided multiple opportunities to complete service properly or show cause why they were unable to do so, details on the apparent deficiencies in service and how they could be remedied, a warning that the case would be dismissed without proof of proper service or good cause shown, and a detailed explanation for the subsequent dismissal. See supra pp. 3-4. 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 or improper judicial motive, complainant's objections to the judge's rulings, including, but not limited to, the orders determining that proof of service was insufficient and dismissing the case, are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also 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 . . . or improper conduct . . . 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. 01-22-90018 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 12, 2023
Date



Chief Judge Barron