

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90019

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JUNE 30, 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 judicial misconduct in connection with a civil rights case over which the district judge presided. The misconduct complaint is not cognizable and is baseless.

Complainant objects to an order that the subject judge issued adopting a magistrate judge's recommendation to transfer complainant's case to another district without addressing complainant's objections, interrogatories, and motions, and granting complainant's request to extend the time to complete service. Complainant alleges that the order was "highly suspect" and indicates "malfeasance" or "nonfeasance" of a "critical nature," and implies that the order indicates judicial disability. Complainant asserts that the order transferring the case was based upon a "false presumption" that the relevant events did not occur within the district, even though complainant presented evidence to the contrary, and was improperly entered in defendant's favor, although

defendant had not filed an answer to the complaint. Complainant requests that the Court of Appeals review his civil rights case and reverse the transfer order.¹

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including appellate review or the reversal of an order. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b).

The reviewed record, including the misconduct complaint and the docket of the proceedings, provides no basis for complainant's allegations of judicial misconduct. The record indicates that complainant initiated a civil rights action in a First Circuit district court against a defendant residing outside of the circuit. Complainant filed an amended complaint, an amended revised complaint, and a motion for an extension of time for service of process. A magistrate judge ordered that the action be transferred to another district because: (1) complainant had an action pending against the same defendant in another district, which could preclude the instant matter; and (2) no events described in the instant matter occurred in the district in which it was initiated. The magistrate judge's order further provided that, if complainant objected to the order, the matter would be reassigned to a district judge. Complainant filed memoranda objecting to the conditional transfer order in which he asserted that defendant was modifying court documents under

¹ Although the allegation is unclear, complainant apparently alleges that clerk's office staff "consistently postponed" the docketing of motions and orders. A review of the docket does not provide any support for this allegation. See infra pp. 2-3. Moreover, the conduct of court staff in exercising their administrative duties is not attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7 (also explaining that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff (citing 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings)).

the magistrate judge's name, explained that his amended revised complaint included a request to expedite service of process, and requested that the action be immediately reassigned to a district judge.

The case was assigned to the subject district judge, who entered an order treating the conditional transfer order as a report and recommendation and advising complainant to either file specific written objections or the court would treat his previously filed memoranda as objections to the report and recommendation. In response, complainant filed a pleading containing objections, interrogatories, and motions, after which the district judge entered an order transferring the action to another district for the reasons stated in the magistrate judge's report and recommendation and granting complainant's motion for an extension to complete service.

The misconduct complaint is meritless. Complainant's conclusory allegations that the order to which complainant objects is "suspect" or otherwise indicative of improper judicial motive or disability are presented with no basis in fact. The record indicates that, upon being assigned to the case, the district judge provided complainant an opportunity to object to the transfer of his case before adopting the magistrate judge's reasoned recommendation to do so and granting complainant's motion for an extension to complete service. See supra p. 3.

Complainant's allegation – that the judge improperly transferred complainant's case based on a "false presumption" and in the absence of an answer to the complaint – derives exclusively from complainant's disagreement with the substance of the district

judge's order. As such, the complaint 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 Commentary on 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 and as baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and (D).

For the reasons stated, Complaint No. 01-22-90019 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).

June 30, 2023
Date



Chief Judge Barron