

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90020

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 judicial misconduct in connection with her civil case, over which the judge presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.¹

Complainant alleges primarily that the judge ordered staff of the U.S. Marshals Service (USMS) not to complete service of complainant's civil complaint on defendants and erroneously ruled that complainant had not served defendants despite evidence to the contrary. Complainant further alleges that the judge attempted to have complainant's case dismissed, discriminated against her, "support[ed]" defendants' counsel, failed to follow "Canons, Rules, and regulations," and had conflicts of interest. Complainant also asserts that the judge ordered staff of the USMS and the clerk's office to engage in wrongdoing,

¹ Complainant includes allegations against another district judge, who is not identified as a subject of the complaint as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rules 1(b), 3(h), and 6. Accordingly, complainant was notified that her complaint was accepted only against the subject judge.

including delaying complainant's case, as well as not complying with the law and docketing exhibits in her case.

Complainant requests that the "Administrati[ve Office of the U.S.] Court[s]" investigate her misconduct complaint and that the judge's order finding that defendants had not been served be reversed.

As an initial matter, the judicial misconduct complaint procedure does not provide for investigation of a misconduct complaint by the Administrative Office of the U.S. Courts or relief in a case, including the reversal of an order. See generally 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct); see Rules of Judicial-Conduct, Rules 11, 19(b), and 20(b).

The reviewed record, including the misconduct complaint and the docket of the relevant proceeding, is devoid of information suggesting that the judge engaged in misconduct in presiding over complainant's case. The record indicates that complainant filed pro se a civil case against three defendants, alleging, inter alia, fraud, and paid the applicable filing fee. The court issued summonses, and counsel for one defendant entered an appearance.

After the deadline for completing service passed, complainant filed several motions in which she asserted that the USMS would not complete service on her behalf, that clerk's office staff informed her that she needed to file a motion requesting that the USMS complete service, and that she had completed service on defendants through certified mail. The judge denied the motions without prejudice on the ground that they

did not indicate any requested relief and explained that no proof of service on two defendants had been filed. The judge further explained that, if complainant would like to request that the USMS complete service on defendants or other relief, complainant may file a motion with clear requests for a remedy. Subsequently, complainant filed a motion for the judge's recusal, and the judge recused from the case (without ruling on the recusal motion).

The misconduct complaint is without merit. Neither the complaint nor the record provides any evidence to support the allegations that the judge directed the USMS not to serve defendants, or was engaged in discrimination, favored complainant's counsel, violated ethical rules, had a conflict of interest, or was otherwise improperly motivated in presiding over complainant's case. The record indicates that, during the few months that the judge presided over the matter, the judge issued a reasoned ruling, denying without prejudice complainant's motions regarding service because they did not include any requested relief and providing complainant the opportunity to file motions with clear requests for remedies. See supra pp. 2-3. Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Where, as here, there is no evidence of bias or improper judicial motivation, complainant's objections to the judge's order denying complainant's motions regarding service 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."). Insofar as complainant alleges that the court delayed complainant's case, this allegation is also not cognizable. See id. Rule 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision . . ."), and Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related."). Therefore, 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).

Finally, while there is no support for complainant's claims that the USMS and clerk's office staff engaged in wrongdoing, by mishandling complainant's case or service of process, the conduct of court staff or staff of other government entities 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 of Judicial-Conduct)). Therefore, the complaint is dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-22-90020 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), (B), and (D).

May 12, 2023

Date



Chief Judge Barron