

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-22-90021, 01-22-90022, 01-22-90023, 01-22-90024, 01-22-90025, 01-22-90026, 01-22-90027, 01-22-90028, and 01-22-90029

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BEFORE  
Montecalvo, Circuit Judge

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ORDER

ENTERED: MARCH 30, 2023

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Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a), against five appellate judges and four district judges of the First Circuit.<sup>1</sup> Complainant alleges judicial misconduct in connection with his attorney disciplinary proceeding and appeal thereof, consolidated civil cases and related appeals, and previous misconduct complaints. The misconduct complaint is baseless and is not cognizable.<sup>2</sup>

**I. Complaint**

Complainant recounts his numerous local and federal court proceedings, repeats allegations from his prior misconduct complaints, and alleges that each of the subject judges acted with bias against him and engaged in conspiracy and criminal conduct in

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<sup>1</sup> Complainant also identifies a retired district judge of the First Circuit as a subject of the complaint. Complainant was notified that, because the governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against current federal judges only, his complaint was not accepted against the retired judge. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rule 1.

<sup>2</sup> The present matter is complainant's third misconduct complaint. See infra p. 6.

connection with his cases and previous misconduct complaints. Complainant alleges specifically that three of the district judges are biased in favor of local court judges (some of whom were defendants in complainant's consolidated civil cases) because the federal and local court judges are affiliated with the same political party.

With respect to the attorney disciplinary proceeding involving complainant's suspension from the local jurisdiction, complainant asserts that the presiding district judge "refused to discuss" the events that had prompted the proceeding. Complainant also alleges that two of the appellate judges presiding over complainant's appeal of the matter erroneously affirmed the district court's judgment.

Complainant further alleges that the district judge who presided over complainant's attorney disciplinary proceeding "paralyzed" complainant's consolidated civil cases and, subsequently, assigned another district judge to the matter, who issued a biased and "egregiously wrong" order dismissing the cases on the ground of judicial immunity, which complainant asserts is inapplicable. Complainant also alleges that the appellate judges presiding over complainant's direct appeal of the consolidated cases issued a biased and conclusory order affirming the district court's dismissal of these cases and that the appellate judges presiding over a petition for writ of mandamus that complainant had filed in connection with the consolidated civil cases delayed in ruling on the matter.

Complainant also objects to the dismissal of complainant's first misconduct complaint and asserts that the circuit judge who dismissed that complaint has delayed in issuing an order regarding complainant's second misconduct complaint.

Complainant requests that the Judicial Conference of the United States (JCUS) remove all First Circuit judges from complainant's direct appeal of the consolidated civil cases and decide this misconduct complaint.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for removing a judge from a case; nor does it provide for referral of a complaint to the JCUS, where, as here, the allegations are unsubstantiated. 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, the dockets of the relevant proceedings, the transcript of the evidentiary hearing in the attorney disciplinary matter, complainant's previous misconduct complaints, and the orders dismissing these complaints, provides no basis for complainant's allegations of judicial misconduct.

## **II. History of the Proceedings**

### **A. Attorney Disciplinary Proceeding and Appeal**

The record indicates that the district court was notified by the local court that complainant had been suspended indefinitely from the practice of law in the local jurisdiction and, in accordance with the governing rule, issued an order to show cause

why complainant should not be reciprocally suspended in the district court. Complainant filed an opposition to the order to show cause, in which he requested a hearing, and the presiding district judge referred the matter to a magistrate judge (who is not a subject of this complaint) for a hearing, if necessary. The magistrate judge held a multi-hour evidentiary hearing, at which complainant, who appeared pro se, testified regarding the events that formed the basis for his suspension. Subsequently, complainant filed two informative motions arguing, inter alia, that his suspension was improper and that the local court violated his due process rights. The presiding district judge entered an order stating that, after reviewing the record, reciprocal discipline was warranted, and suspending complainant from the practice of law in the district court.

Complainant appealed the district court's order of suspension, asserting in his brief, inter alia, that the district court failed to provide him with a full opportunity to present evidence. Based on the briefing, the Court of Appeals issued a judgment, indicating that the Court had carefully reviewed the record and complainant's brief and concluded that there was no abuse of discretion in the district court's imposition of discipline.

#### B. Consolidated Civil Cases and Appeals

The record indicates that complainant filed two pro se civil cases, one of which was assigned to a subject district judge, against numerous local court judicial officers, government officials, and attorneys, in connection with complainant's local civil proceedings. The subject judge granted complainant's motion to consolidate the cases,

and the consolidated cases were first assigned to a judge who is not a subject of this complaint. Defendants filed motions to dismiss, arguing, inter alia, that complainant failed to state a claim upon which relief can be granted and that the judicial officer defendants had immunity, and complainant objected to the motions. A number of months later, complainant filed a petition for writ of mandamus, requesting that the Court of Appeals order the district court to rule on a number of outstanding motions.

Thereafter, the cases were briefly reassigned to another subject district judge who took no action in the matter before the chief district judge reassigned the cases to yet another subject district judge. Approximately a month later, the presiding judge issued an order, providing that the court had carefully reviewed the record and dismissing the cases on the grounds of judicial immunity as to the judicial officers and failure to state a plausible claim as to the non-judicial defendants. Accordingly, the Court of Appeals denied the petition for mandamus as moot.

Complainant appealed the order dismissing the consolidated cases, asserting that the doctrine of judicial immunity was inapplicable. After further briefing by both parties, the Court of Appeals affirmed the dismissal of complainant's cases substantially on the grounds included in the district court's order of dismissal. Complainant subsequently filed a motion to void the judgment and a petition for panel rehearing and rehearing en banc, both of which the Court denied.

### C. Previous Judicial Misconduct Complaints

In complainant's first misconduct complaint, he alleged that a magistrate judge (who is not a subject of the present matter) and the district judge who presided over his attorney disciplinary proceeding were biased against him. See supra pp. 3-4. In the order dismissing the complaint, the presiding circuit judge recounted complainant's allegations and the relevant procedural history, and determined that the complaint was not indicative of misconduct, was baseless, and was not cognizable. Complainant filed a second misconduct complaint against the district judge who dismissed the consolidated cases, alleging that the judge issued an "arbitrary and bias[ed]" order dismissing these matters. See supra pp. 4-5. A different presiding circuit judge dismissed the complaint as frivolous and as not cognizable.

### **III. Analysis**

The complaint is meritless and is simply another attempt by complainant to reassert his disagreement with the judges' rulings in his multiple proceedings. Neither complainant nor the record provides any information to support the allegations that any of the judges were biased against complainant, based on purported political affiliations or any other reason, conspired against him, or engaged in criminal or any improper activity in connection with his district court, Court of Appeals, or misconduct proceedings. The record demonstrates that, in each of the proceedings underlying the present matter, complainant was afforded numerous opportunities to present his claims, and that the judges considered his submissions and issued reasoned rulings. See supra pp. 3-6.


Further, the district court's order of reciprocal discipline followed a multi-hour evidentiary hearing at which complainant testified at length regarding the events that served as the basis for his suspension from the local court. 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 of Judicial-Conduct, Rule 11(c)(1)(D).

As there is no evidence of bias or other judicial wrongdoing, complainant's objections to the courts' orders -- including but not limited to, the order reassigning the consolidated civil cases, the order dismissing the consolidated civil cases, the Court of Appeals orders affirming the district court judgments in the attorney disciplinary and consolidated civil cases, the Court of Appeals order dismissing complainant's mandamus petition, and the order dismissing complainant's first misconduct complaint -- 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 on Rule 4 ("Rule 4(b)(1) . . . preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling . . . . [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related."). The same is true for complainant's allegations of delay. 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. . . ."), and Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge . . . ."). Accordingly, the complaint is dismissed 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 Nos. 01-22-90021, 01-22-90022, 01-22-90023, 01-22-90024, 01-22-90025, 01-22-90026, 01-22-90027, 01-22-90028, and 01-22-90029 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

March 30, 2023  
Date

  
Judge Montecalvo