

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-22-90033

BEFORE  
Kayatta, Circuit Judge

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ORDER

ENTERED: JULY 31, 2023

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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 complainant's civil case over which the district judge presides. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the subject judge was prejudiced against complainant in presiding over her civil case and engaged in conduct that was "prejudicial to the effective and expeditious administration of the courts, undermine[d] public confidence in the integrity and impartiality of the judiciary, . . . create[d] a strong appearance of impropriety," and violated federal law and multiple Canons of the Code of Conduct for U.S. Judges (Code of Conduct).<sup>1</sup> Complainant further asserts that the judge should have

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<sup>1</sup> Complainant identifies the following provisions of the Code of Conduct in her complaint. Canon 1: "A judge should uphold the integrity and independence of the judiciary." Canon 2(A): "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 2(B): "A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 3: "The duties of judicial office take precedence over all other activities. The

recused from complainant's case, pursuant to 28 U.S.C. §§ 144 and 455(a) and the Code of Conduct, because the judge's orders denying a number of complainant's motions indicate bias against complainant and that the judge has a "personal, social, financial, or political relationship with defendants." Complainant asserts that the judge "stalled" in taking the "appropriate and necessary action" on complainant's motions and entered orders to protect defendants due the judge's personal interest in the case.

Complainant objects to the judge's orders, including the court's failure to acknowledge numerous defendants named in the case and the absence of an explanation for its denial of complainant's request for a district court panel of judges to preside over the proceeding, the latter of which complainant asserts was an "intentional and oppressive act . . . due to bias, prejudice, and possible affiliation with one or several of the . . . defendants." Complainant contends that the judge was obligated to notify the chief district judge of complainant's request for a district court panel and of other motions in complainant's case. Complainant asserts that the judge lacked the authority to enter an order denying complainant's motion for a restraining order and did not review complainant's evidence in doing so. Complainant asserts that the judge "took advantage" of complainant's pro se status and violated the law when denying complainant's three motions for appointment of counsel.

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judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased."

Complainant requests review of her motion requesting a panel of district court judges to preside over her case and her motion for the judge's recusal, that the judge disclose any potential affiliations with defendants, that the judge be removed from complainant's case, that complainant be awarded injunctive and monetary relief, and a court order providing complainant access to a social media platform and directing that information about complainant be removed from a website.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining review of orders or relief in a case, as requested by complainant. 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 docket of the proceedings, provides no evidence in support of complainant's claims of judicial misconduct. The record indicates that complainant initiated a civil action in federal court against state judges, corporations, individuals, and a state outside of the circuit, as well as others, apparently challenging state court proceedings, and filed motions for an emergency temporary restraining order, for leave to proceed in forma pauperis, and to appoint counsel.<sup>2</sup> The following month, the judge entered a multiple-page order denying the motion for a temporary restraining order, explaining that complainant failed to show a

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<sup>2</sup> On the face of complainant's civil complaint filed in the federal district court, complainant identified a specific number of defendants and indicated that an exhibit to the complaint included additional named defendants. In her motions filed on the same day as the complaint, complainant used a case caption identifying only those defendants included on the face of complainant's civil complaint. The case caption on the docket of the case includes the same defendants named on the face of the complaint and on complainant's motions.

likelihood of success in demonstrating that the court has personal jurisdiction over defendants and that the court lacks jurisdiction to resolve complainant's challenge to state court rulings. On the same day, in a multiple-page memorandum and order, the judge allowed complainant's motion for leave to proceed in forma pauperis and denied the motion for counsel, noting that complainant must file an amended complaint that demonstrates the court's jurisdiction or the action would be dismissed.

Complainant filed a motion for reconsideration of the denial of her request for counsel and an emergency request for review of her case by a panel of district court judges pursuant to a specific statute, both of which she directed to the chief district judge. The subject judge denied both the motion and request in a multiple-page order, explaining that final decisions of the district court are not appealable to the chief district judge, but to the U.S. Court of Appeals for the First Circuit, and cited to case law establishing that a civil plaintiff lacks a constitutional right to free counsel and that the cited statute had been repealed. Thereafter, complainant filed a motion for the judge's recusal, a second emergency motion for review of her case by a panel of district court judges this time pursuant to a different statute, and a second motion for reconsideration. In a multiple-page memorandum and order, the judge summarized the relevant background, described complainant's motions and the applicable caselaw before denying the motions, acknowledged the relaxed standard applied to pro se pleadings, and permitted complainant a final opportunity to file an amended complaint.

Following the court's order, complainant filed a motion to seal the record and a motion for leave to amend the complaint ex parte, which were denied for failure to present a compelling reason to overcome the strong presumption in favor of public access and to follow the applicable procedure, respectively.

The misconduct complaint is meritless. There is no evidence in the complaint or in the record to support complainant's allegations that the judge was prejudiced against complainant because of any relationship with defendants or for any other reason, "took advantage" of complainant's pro se status, violated federal law or the Code of Conduct in denying the motions to recuse,<sup>3</sup> entered orders to protect defendants, or engaged in any other wrongdoing. To the contrary, the judge's multiple lengthy and reasoned orders demonstrate that the judge carefully considered complainant's pleadings, liberally construed her claims, cited to applicable caselaw and procedural rules, and gave complainant multiple opportunities to file an amended complaint demonstrating the court's jurisdiction. See supra pp. 3-5. 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).

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<sup>3</sup> A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Commentary on Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules . . .").

Where, as here, there is no evidence of bias or improper judicial motivation, complainant's objections to the judge's rulings or determinations, including, but not limited to, the denials of the motions for a temporary restraining order, for counsel, for review of her case by a panel of district court judges, for referral to the chief district judge, and for the judge's recusal<sup>4</sup> 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, including a failure to recuse. 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 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."). The same is true for complainant's allegations that the judge improperly omitted identified defendants from the court's orders<sup>5</sup> or delayed complainant's case. 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 or habitual delay in a significant number of unrelated

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<sup>4</sup> Neither complainant nor the record provides any support for her conclusory allegations that the judge had any interest or bias in the case requiring recusal under either the Code of Conduct or the statutes referenced by complaint (28 U.S.C. §§ 144 and 455(a)). See supra note 3. See also Boudin, C.C.J., Order, In Re: Complaint No. 362 (Dec. 16, 2003) ("[A] violation of the disqualification statute, 28 U.S.C. § 455, [would] not automatically [be] a violation of the Judicial Misconduct statute[; however] conceivably a sufficiently egregious violation, especially if coupled with evidence of bad faith, might . . . rise to the level of judicial misconduct." (citation omitted)).

<sup>5</sup> Although not necessary to the disposition of the matter, the judge's orders and the docket in the case listed the same defendants that complainant listed in her complaint and motions. See supra note 2. Further, any error by court staff in this regard, of which there is no evidence, would not be attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at 7.

cases."). 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. 01-22-90033 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), respectively.

July 31, 2023  
Date

  
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Judge Kayatta