

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-22-90034 – 01-22-90038

BEFORE
Rikelman, Circuit Judge

ORDER

ENTERED: AUGUST 22, 2023

Complainant, a pro se appellant in a criminal proceeding, has filed a complaint under 28 U.S.C. § 351(a) against five judges of the U.S. Court of Appeals for the First Circuit. Complainant alleges judicial misconduct in connection with his appeal. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the Court's delay in ruling on his appeal of a judgment from his criminal case "exceeds the limits of due process" and "substantially affect[s] the fairness of the appellate proceeding." Complainant specifically asserts that the judges have ignored his appeal, despite knowing of the district court's alleged prejudice against him. Acknowledging that allegations of delay of a particular decision need to concern an improper motive to constitute cognizable misconduct, complainant contends that the judges' inconsistent reasoning in extension and stay orders granted during the appeal and the length of the delay in ruling on the pending motions indicate an improper motive.

Complainant further alleges that the judges have attempted "to cover up many irregularities [that] they have made."¹

The reviewed record, including the misconduct complaint and the docket of the relevant proceeding, provides no basis for complainant's allegations of judicial misconduct. According to the record, complainant filed pro se an appeal of a judgment from his criminal case. After a circuit judge, who is not a subject of this misconduct complaint, granted complainant's motion to proceed pro se, complainant filed his brief. The government filed four requests for extensions of time to file its brief, and, through orders issued by the Clerk of Court, the Court granted the motions. In the orders granting the second, third, and fourth requests, the Court included language informing the government that the Court was reluctant to grant any further extensions of time and that counsel should not seek a further extension without demonstrating grave cause. The government filed a fifth motion for an extension, explaining, in part, that it had experienced technological difficulties in completing review of its response, and the Court, through an order issued by the Clerk of Court, allowed a final one-week extension.

Five months after complainant filed his brief, the government filed a motion for summary dismissal and an unopposed motion to stay the briefing schedule pending disposition of the motion for summary dismissal. Through an order issued by the Clerk of

¹ Complainant seems to include allegations against a retired judge and district judge in the First Circuit, though neither judge was named as a subject judge on the complaint form. 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 and require that subject judges be identified in the complaint. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1, 3(h), and 6. Accordingly, these allegations are not addressed, and complainant was notified that the complaint was accepted only against the properly identified appellate judges.

Court, the Court granted the government's motion seeking to stay the briefing schedule pending a decision on the motion for summary disposition. In response to the government's pending motion for summary disposition, complainant filed an opposition and a motion for summary reversal and remand. Complainant has since filed several letters requesting status updates, motions to expedite ruling on the pending motions, and a motion to vacate the government's motion to stay the briefing schedule, all of which remain pending.

The misconduct complaint is without merit. As a general matter, and as complainant acknowledges, delay in a single case does not, absent evidence of improper judicial motive, constitute cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), 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 cases."), 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, *i.e.*, assigning a low priority to deciding the particular case."). The record includes no information to support complainant's allegations that the appellate judges have ignored the appeal, denied complainant's constitutional rights, "cover[ed] up [their] irregularities," or otherwise exhibited an improper motive in connection with complainant's appeal. Complainant's conclusory assertion that the Court used inconsistent reasoning in its orders, all of which have been procedural and issued by the Clerk of Court (except for the

order allowing complainant to appear pro se), is both unsupported and would not alone evidence improper judicial motive. Accordingly, complainant's allegation that the judges have improperly delayed complainant's appeal by not ruling on the pending motions is not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(2) and Commentary on Rule 4, supra. Therefore, 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 Nos. 01-22-90034 – 01-22-90038 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.

August 22, 2023
Date



Judge Rikelman