

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-22-90039

BEFORE
Kayatta, Circuit Judge

ORDER

ENTERED: AUGUST 11, 2023

Complainant, a previously represented civil 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 two civil cases over which the district judge presided, both of which have been closed for more than a decade. The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge "accepted bribes, gifts, or other personal favors" from individuals associated with defendants in complainant's two copyright infringement cases and implies that the judge did so in exchange for providing preferential treatment to the defendants. Specifically, complainant asserts that the judge entered into professional relationships with individuals who had "very strong ties" to a defendant in complainant's first case and with another individual who was previously employed by a defendant in complainant's second case. Complainant suggests that, in complainant's first case, the judge improperly failed to disclose personal relationships

with individuals associated with defendants that would indicate a potential conflict of interest.

Complainant further alleges that, in the first case, the judge engaged in improper ex parte communications and conspired with defendants to deny complainant a jury trial, knowingly withhold evidence, and grant defendants' motion for summary judgment without "interrogation," although there were "factual dispute[s]" in the case. Complainant also alleges that, at a hearing in the first case, the judge interrupted complainant's counsel, exclaimed that there were "[d]eep [p]ockets in the courtroom" and that "serious legal fees [were going to be awarded] against the loser," and advised complainant's counsel to "take [their] client into the conference room and convince him to give up this lawsuit." Complainant adds that, due to the judge's "threats," he felt intimidated and "signed away his right to appeal" the dismissal of the case.

The reviewed record, including the misconduct complaint and attachments, and docket and transcripts of the relevant proceedings, provides no basis for complainant's allegations of judicial misconduct. The record indicates that complainant, while represented by counsel, initiated a civil action against several defendants, alleging copyright infringement. Defendants filed two motions to dismiss or, in the alternative, for summary judgment, arguing that a required element of the copyright infringement claim – "substantial[] similar[ity]" between the protected elements of the parties' respective works – was lacking; and complainant filed an opposition to the motions. Thereafter,

complainant filed a motion to strike defendants' statement of material facts, to which defendants responded and replied to complainant's opposition to defendants' motions.

At a hearing regarding the pending motions, the judge outlined the required elements for a copyright infringement claim and summarized each party's position, based on the pleadings, and the applicable caselaw. Additionally, the judge explained that the court had discretion to award the prevailing party attorneys' fees, which were likely to be significant, that it was assumed that defendants had more resources than complainant, and that the parties should understand that risk. Counsel for both parties then presented their arguments and answered the judge's questions. At the conclusion of the hearing, the judge stated that both works would be reviewed by the court, and that there was a concern with the likelihood of substantial attorneys' fees in the case, adding that both parties should be aware of the significant financial risk, and offered the parties the opportunity to inform the court if they wished to make a concession.

Neither party indicated an interest in settlement, and the judge, in a multiple-page memorandum and order, summarized the works, explained why complainant's central argument – that the two works had substantial thematic and structural similarities – had little or no precedential support, detailed a few of the most prominent differences between the works, concluded that no substantial similarity existed, and terminated the case in defendants' favor.

Years later, complainant filed pro se a second copyright infringement action regarding another work of one of the defendants in the first case. Defendants filed a

motion to dismiss or, in the alternative, for summary judgment, and the parties filed their respective responses and replies. The subject judge referred the motion to a magistrate judge, and the case was reassigned to another district judge. The magistrate judge entered a multiple-page report and recommendation that defendants' motion be allowed as complainant failed to demonstrate a substantial similarity between the works. After filing an objection to the report and recommendation, complainant filed a motion for the subject judge's recusal due to the judge's potential relationships with one of the defendants and other unspecified individuals, based, in part, on their alleged attendance at the same schools. The presiding judge adopted the report and recommendation in a multiple-page memorandum and order, entered judgment in favor of defendants, and denied the motion to recuse as moot.

The misconduct complaint is without merit. Neither complainant nor the record supports the allegation that the judge "accepted bribes, gifts, or other personal favors," provided preferential treatment to the defendants, or otherwise had relationships with individuals that would have created a conflict of interest or required the judge's disclosure.¹ See, e.g., Code of Conduct for U.S. Judges, Canon 3(C)(1) (providing circumstances in which a judge has a disqualifying conflict of interest). Further, any error

¹ Complainant includes numerous documents as attachments to his complaint, including excerpts of editorial reviews, press articles, and interviews, that purport to identify connections between the judge and individuals with "strong ties" to defendants (or their employees), but none of the documents provide any information suggesting a connection between the judge's contacts and defendants that would give rise to a conflict of interest or warrant further inquiry. See, e.g., Code of Conduct for U.S. Judges (Code of Conduct), Canon 3(C)(1).

in determining a conflict of interest, of which there is no evidence, would not on the present facts amount to judicial misconduct.²

There is also no evidence in the complaint or the record of the proceedings for complainant's allegations that the judge engaged in improper ex parte communications, or conspired with defendants to withhold evidence or for any other purpose in presiding over complainant's case. Instead, the record indicates that, in complainant's first copyright action, the judge considered both parties' arguments, included in their pleadings and oral arguments, and both works in the court's detailed multiple-page memorandum and order allowing summary judgment for defendants. See supra p. 3. With respect to the second case, the judge's role was limited to referring defendants' motion to dismiss or, in the alternative, for summary judgment, to a magistrate judge. See supra pp. 3-4.

Similarly, complainant's assertions that the judge threatened complainant by exclaiming that there were "[d]eep [p]ockets in the courtroom" and that "serious legal fees [were going to be awarded] against the loser," and by advising complainant's counsel to "take [their] client into the conference room and convince him to give up this lawsuit" are belied by the record. See supra p. 3. Moreover, the judge's statements at the hearing regarding attorney's fees and providing the parties an opportunity to consider settlement

² 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."); 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 . . .").

in no way indicate bias or other wrongdoing. See id.; and Boudin, C.C.J., Order, In re Judicial Misconduct Complaint No. 444 (January 23, 2007), at pp. 3-4 ("It is well settled that judges are entitled to form views about the merits, and to express them, during the course of the case so long as the judgements rest on the evidence and arguments in the proceeding itself Leaving aside extraordinary circumstances, the expression of views by the judge on the merits . . . [does not] constitute bias.") (citing In re Marisol Martinez-Catala, 129 F.3d 213 (1st Cir. 1997)). Therefore, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

As there is no evidence of improper judicial motive or other wrongdoing, complainant's allegations amount to nothing more than challenges to the substance of the judge's decisions in the first copyright action, including not disclosing purported professional relationships and the order granting defendants' motions for summary judgment, and therefore, 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, including a failure to recuse. 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, 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. 01-22-90039 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 11, 2023
Date



Judge Kayatta