

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-23-90007 AND 01-23-90008 AND
COMPLAINT NOS. 01-23-90011, 01-23-90012, AND 01-23-90013

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 26, 2023

Complainant, a pro se litigant, has filed two complaints under 28 U.S.C. § 351(a) against two district judges in the First Circuit and against three judges of the First Circuit Court of Appeals. Complainant alleges judicial misconduct in connection with complainant's civil case, over which one of the district judges presided, and his subsequent petition for writ of mandamus, over which the appellate judges presided. The misconduct complaints are frivolous and are not cognizable.

Complainant alleges that the district judge who presided over his civil case (first district judge) "blocked justice" in vacating orders that the court had issued in complainant's favor, after receiving a phone call from one of the defendants. Complainant asserts that the three appellate judges engaged in criminal conduct when they "tr[ied] to conceal [the first district judge's] crime" and that the appellate judges, as well as the second district judge, improperly failed to remedy the first district judge's actions.

The reviewed record, including the misconduct complaints and the dockets of the relevant proceedings, provides no evidence to support complainant's allegations of judicial wrongdoing. Complainant filed pro se a civil complaint alleging that numerous individuals engaged in a conspiracy against him, as well as motions for leave to proceed in forma pauperis (IFP) and as a pro se electronic filer. Several months later, the first district judge issued text orders granting the motions and, the following day, vacated the orders. Less than two weeks later, the first district judge denied the motions for leave to proceed IFP and as a pro se electronic filer and dismissed the case in a multiple-page order, explaining that the court previously granted the two motions in error, that the civil complaint does not state a plausible claim for relief, and that the court lacks jurisdiction. The court entered judgment for defendants the same day.

Subsequently, complainant filed a petition for a writ of mandamus in the First Circuit Court of Appeals, in which he asserted, in part, that the first district judge vacated the orders granting his motions to proceed IFP and as a pro se electronic filer because one of the defendants called the judge to "influence[the court] to block [complainant's] access to justice"; complainant further requested that the dismissal of his civil case be vacated and that the case be assigned to a different judge and heard by a jury. A Court of Appeals panel comprised of the subject appellate judges, issued a judgment indicating that the Court carefully reviewed the petition and the record and determined that mandamus relief was not warranted.

There is no support whatsoever in the misconduct complaints or the record for complainant's conclusory allegations of judicial misconduct. There is no evidence that the first district judge was improperly motivated in vacating the orders granting complainant's motions to proceed IFP or as a pro se electronic filer because of a phone call from one of the defendants or for any other reason. Moreover, the record shows that the judge issued a detailed order, explaining that the motions were granted in error and providing the grounds for denial of the motions. See supra p. 2.

There is also no support for complainant's apparent assertion that the appellate judges sought to "conceal" the first district judge's actions when the Court of Appeals denied complainant's petition for mandamus. To the contrary, the record indicates that the Court of Appeals carefully reviewed complainant's petition and the record and concluded that mandamus relief was not appropriate. See id. Nor does complainant offer any basis for the claim that the second district judge or the appellate judges were obligated to "remedy" the first district judge's handling of the case, as the record indicates that the first district judge did not engage in any judicial wrongdoing in presiding over the proceeding. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4(a)(6) ("Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability."). Therefore, the complaints are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Where, as here, there is no evidence of improper judicial motivation, complainant's objections to the district court's orders vacating the orders granting complainant's motions to proceed IFP and as a pro se electronic filer and denying the motions, and the Court of Appeals' judgment denying complainant's petition for mandamus 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 . . . 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 ("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."). Accordingly, the complaints are 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. 01-23-90007 and 01-23-90008 and Complaint Nos. 01-23-90011, 01-23-90012, and 01-23-90013 are 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 (C).

October 26, 2023
Date



Chief Judge Barron