

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-23-90009

BEFORE  
Barron, Chief Circuit Judge

---

ORDER

ENTERED: NOVEMBER 28, 2023

---

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 his civil case over which the judge presided.<sup>1</sup> The misconduct complaint is baseless and is not cognizable.

While recounting the procedural history of his case, complainant alleges that the judge unreasonably delayed his proceedings, taking months to rule on a number of his motions. Complainant further alleges that the judge failed to provide him access to the court by denying him the rights to be heard and to counsel, "costing [him] unnecessary expenses," and violated various laws and the Federal Rules of Civil Procedure.

Complainant suggests that the judge is biased against pro se litigants, and alleges that, in denying his requests for an attorney but requiring that his pleadings be filed by counsel,

---

<sup>1</sup> Although complainant mentions in the brief statement of facts and other materials submitted with his complaint another civil case over which the judge presided, he did not make any specific allegations regarding the case and did not list the case on his complaint form. Accordingly, this case is not addressed. See Rules of Judicial-Conduct and Judicial-Disability Proceedings, Rule 6(b) (requiring that a complaint "contain a concise statement that details the specific facts on which the claim of misconduct . . . is based").

the judge failed to provide him the necessary accommodations to protect his liberty.

Complainant objects to the judge's rulings as "[un]fair interpretation[s] of the law" and to the judge's failure to enter a default or summary judgment in his favor.

Complainant requests that a default judgment be entered immediately in his case and that the judge recuse so that the judge's "abuse of process" can be further prevented.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including an order for default or summary judgment, or the recusal of a judge. 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, its attachments, and the docket of the relevant proceeding, provides no basis for complainant's allegations of judicial misconduct. According to the record, complainant initiated pro se a civil action alleging, in part, that a number of government officials and organizations discriminated against him, and filed motions to proceed in forma pauperis (IFP), for attorney's costs and fees, and for funds to represent himself. Before summonses were issued, complainant filed proofs of service, indicating that he had served summonses on each defendant via the U.S. Postal Service, and a pleading explaining that defendants had been served, followed by motions for summary judgment, for default judgment, and for funds. The next month, after waiving service of the summons, one defendant filed a motion to dismiss, and complainant filed a motion for default judgment.

The following month, the judge, in a multiple-page order, allowed complainant's request to proceed IFP, denied complainant's motions for attorney's fees and costs as premature, denied complainant's motions for funds to represent himself, for summary judgment, and for default judgment, ordered complainant to file an amended complaint curing enumerated deficiencies or the court would dismiss the action, and denied defendant's motion to dismiss. Subsequently, complainant filed motions requesting attorney's costs and fees and a default judgment, which the court denied shortly thereafter, as premature and because no defendant was in default, respectively.

The next month, complainant filed two untimely amended complaints and, in the subsequent months, filed more than a dozen other pleadings. Several months later, the judge entered an order noting the untimeliness of complainant's amended complaint, ordered that summonses issue as to the named defendants in the amended complaint, dismissed the action as to all other defendants, and informed complainant that he may elect to have service of the amended complaint made by the United States Marshals Service. The judge also denied all of complainant's requested relief with explanations as to each request, and warned complainant that his continued filing of pleadings not in conformity with the applicable rules could result in sanctions.

After the deadline for service, the court entered an order for complainant to file proof of service or show good cause why service had not been made on defendants. Thereafter, complainant filed returned executed summonses and a motion to compel default judgment or summary judgment. In a multiple-page memorandum and order, the

judge denied complainant's pending motions, explained why each returned executed summons was deficient, and ordered complainant to effectuate service properly.<sup>2</sup>

The misconduct complaint is meritless. Complainant provides and the record includes no information to support the allegations that, in presiding over complainant's case, the judge denied complainant access to court or to accommodations to which he was entitled, required complainant to file through counsel, violated the law or procedural rules, was biased against complainant because he was a pro se litigant, or for any other reason, or engaged in any other judicial wrongdoing. Instead, the record demonstrates that the judge issued multiple reasoned orders explaining the deficiencies in complainant's pleadings and attempts at service, permitted complainant to file an amended complaint and multiple opportunities to serve defendants properly, and accepted complainant's untimely amended complaint. 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, improper judicial motive, or other judicial wrongdoing, complainant's allegations amount to nothing more than challenges to the substance of the court's rulings, including, but not limited to, the orders determining that service was not properly made and denying complainant's motions for default judgment, summary judgment, attorney's fees, and funds, and therefore, are not cognizable. See

---

<sup>2</sup> Ultimately, the judge entered an order dismissing the civil complaint due to complainant's failure to make service and to follow the court's instructions and requirements, despite multiple warnings and requests.

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 ("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 allegation that the judge improperly 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 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. 01-23-90009 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).

November 28, 2023  
Date

  
\_\_\_\_\_  
Chief Judge Barron