

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90014

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. The misconduct complaint is frivolous, baseless, and not cognizable.

Complainant alleges that the judge is "directly involve[d]" in collusion with a state court, the attorneys that represented defendants in complainant's case, and federal court staff (including an unnamed clerk of the subject judge). Complainant further alleges that this collusion involves violent crimes by state "authorities" against complainant, his children, and a number of individuals connected to complainant's civil case that were committed in retaliation against complainant for filing a civil case against several state government officials.¹ Complainant asserts that the judge ignored complainant's motion in which he provided facts relating to these crimes.

¹ Complainant includes the facially implausible claims about one of the judge's clerks that there are "established connections" between the clerk and the violent crimes, and that the clerk has "attempt[ed] to silence [complainant] . . . and stop" him from filing his civil case, by repeatedly stating that she was "'a bug exterminator,'" when

Complainant further alleges that the judge relied on "alter[ed]" records, which excluded testimony favorable to complainant, in the court's order dismissing complainant's case and that this reliance on the falsified records "could be interpreted as . . . a murderous threat [and] a 'WARNING.'" Complainant asserts that the judge "constantly denied [complainant's] right to discovery" and "any opportunity to present supporting evidence" in his case, but then dismissed the case because complainant did not present "enough evidence." Complainant adds that, in the order dismissing complainant's case, the judge incorrectly stated the amount of time during which complainant was denied federal benefits.

The reviewed record, including the misconduct complaint and the docket of the proceeding, provides no evidence to support complainant's allegations of judicial wrongdoing. Complainant filed pro se a civil complaint against several state officials, challenging, in part, defendants' allegedly erroneous termination of complainant's federal benefits, as well as a motion to proceed in forma pauperis (IFP). The court granted the IFP motion, and a magistrate judge issued a report and recommendation that certain of complainant's claims be dismissed because of the lack of jurisdiction and a private right of action, as well as the failure to state a claim on which relief may be granted; after no timely objections were filed, the judge adopted the report and recommendation. All

complainant's phone call was transferred to the judge's chambers, and then disconnecting the call. These allegations lack any indication of reliability. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 11. Moreover, the judicial misconduct complaint process does not provide a mechanism for filing a complaint against judiciary staff, and the conduct of court staff in exercising their administrative duties is not attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7 (citing 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct).

defendants filed answers, and the judge granted, in part, and denied, in part, a motion to dismiss certain claims filed by two defendants, over complainant's objection.

Over the next year and a half, the court ruled on a number of contested motions. The judge denied complainant's motion to disqualify counsel for one of defendants on the ground that the state attorney discipline office declined to docket complainant's grievance based on the same allegations against defense counsel because there was no reasonable likelihood that counsel violated ethical rules. The judge also denied defendant's motion in limine to prevent the subpoena of counsel, as premature. The magistrate judge denied complainant's motion to compel defendants to produce documents described in their initial disclosures, explaining that defendants had complied with initial disclosure requirements.

Defendants filed motions for summary judgment, and complainant filed an objection and requested, in part, an extension of the discovery schedule in light of violent crimes perpetrated against a potential witness in the case and her children. The judge entered a lengthy order summarizing the procedural and factual background, and granting summary judgment, on grounds including lack of standing and failure to present a triable claim for damages. The judge also denied complainant's motion for an extension of the discovery schedule, explaining that the crime was irrelevant to complainant's case and that complainant failed to provide any information to indicate that his failure to complete discovery requests was due to excusable neglect, as required by the Federal Rules of Civil Procedure.

The complaint is meritless. Both the complaint and the record are devoid of any support for complainant's conclusory allegations that the judge was involved in any collusion or retaliation against complainant. Accordingly, the complaint is dismissed as frivolous, 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)(C).

Further, complainant's allegation that the judge ignored complainant's motion providing information related to the violent crime against a potential witness in his case is belied by the record, as the judge addressed and dismissed the motion in the court's order granting summary judgment to defendants. See supra p. 3. There is likewise no support for complainant's allegations that the judge denied complainant the ability to present evidence in the case, threatened complainant in the court's order granting summary judgment to defendants, or was otherwise improperly motivated in presiding over complainant's case. Rather, the record indicates that the judge allowed multiple of complainant's claims to proceed in the initial screening of the civil complaint and in ruling on defendants' motions to dismiss, and issued a lengthy memorandum and order outlining the factual and procedural history of the proceeding and explaining why each of complainant's claims failed to survive summary judgment, as well as several other reasoned orders. See supra pp. 2-3. Accordingly, 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).

Where, as here, there is no evidence of illicit judicial motivation, complainant's objections to the court's rulings -- including the order granting summary judgment to

defendants² and those denying complainant's discovery requests -- are not cognizable. These claims amount to nothing more than challenges to the substance of orders with which complainant disagrees. 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 complaint is 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 No. 01-23-90014 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), (C), and (D).

November 28, 2023
Date



Chief Judge Barron

² Although not necessary to the dismissal of the misconduct complaint, there is no information indicating that the court's summary judgment order was based on altered records or included factual inaccuracies. Likewise, the record does not indicate that the judge misstated the amount of time during which complainant was denied his federal benefits in the order of dismissal. Although complainant had alleged that his federal benefits were terminated for an extended period, the court relied on a state agency letter, included as an exhibit to a motion for summary judgment, indicating that there had been no lapse in benefits.