

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-23-90015

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: JANUARY 11, 2024

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

Complainant alleges that the judge is "mentally" disabled because the judge "work[ed] as [an a]ttorney" for defendants, instead of "working as a [j]udge," had a conflict of interest, a financial interest in defendants in complainant's civil case, made false statements, committed perjury and bribery, and dismissed the case in order to support defendants. Complainant alleges that the judge retaliated against complainant in presiding over the case because complainant reported the judge's "behavior three times to the Counsel Administration in DC and Congress."

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<sup>1</sup> This is complainant's second misconduct complaint. In complainant's first misconduct complaint, she alleged that a different district judge engaged in misconduct in presiding over another of her civil cases. See Judicial Misconduct Complaint No. 01-22-90010. The complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See Barron, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-22-90010 (June 15, 2023).

Complainant asserts that, in order to delay complainant's case, the judge issued an order directing complainant to file proposed summonses and that the judge then ruled erroneously that complainant failed to file the proposed summonses and to serve defendants properly, even though complainant had done both. Complainant seems to allege that, by means of this order addressing staff's error in issuing summonses with a typographical error, the judge concealed the bias of clerk's office staff. Complainant also contends that the judge failed to issue corrected summonses and that complainant learned that the judge had dismissed the case in early 2023 without informing complainant. Complainant alleges that the judge obstructed justice when using language in an unidentified letter to complainant that was "[c]op[ied] and [p]aste[d]" from letters issued in two of complainant's other civil cases.

Complainant requests that the judge be removed from the bench.<sup>2</sup>

As an initial matter, the judicial misconduct complaint procedure does not provide for the removal of a district judge, where, as here, the allegations are unsubstantiated. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19(b), and cf. id. Rule 20(b)(2)(A) ("A judicial council must refer a complaint to the Judicial Conference if the council determines that a . . . district judge may have engaged in conduct that . . . might constitute ground for impeachment . . .").

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<sup>2</sup> Complainant includes allegations against three other district judges of the First Circuit, as well as a district judge from another circuit, but does not identify any of these judges as subjects of the complaint as required by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct). See Rules of Judicial-Conduct, Rules 1(b), 3(h), and 6. Further, a judicial misconduct complaint "must be filed . . . in the jurisdiction in which the subject judge holds office." See id. Rule 7(a)(1). Accordingly, these allegations are not addressed, and complainant was notified that her complaint was accepted only against the subject judge.

The reviewed record, including the misconduct complaint and attachments and the docket of the relevant proceeding, is devoid of information suggesting that the judge engaged in judicial misconduct in presiding over complainant's case. The record indicates that, in 2022, complainant filed pro se a civil case and attached to the civil complaint summonses for each defendant that included a typographical error. The court issued summonses reflecting the error. Complainant filed two motions requesting that corrected summonses issue, as well as copies of proof of service forms indicating that she had personally mailed the summonses and civil complaint via certified mail to each defendant.

After several defendants filed motions to quash service, the judge issued an order explaining that complainant did not properly serve defendants, as the governing rules provide that a party to an action cannot complete service, directed complainant to file new proposed summonses, provided her time to serve all defendants after the clerk of court issued summonses, and reminded complainant to review the summonses for accuracy. Among other pleadings, complainant filed a motion in which she indicated that she had submitted the proposed summonses, although no proposed summonses were included, and requested that the court issue corrected summonses.

After expiration of the deadline for filing the proposed summonses, the judge entered an order explaining that complainant had not filed the proposed summonses, providing her with additional time to do so, and warning that, if she failed to effect proper service, her case may be dismissed. After this additional deadline had passed, in early

2023, complainant filed a motion stating that she had properly served defendants through a third party, that the court had not issued the corrected summonses despite complainant's timely motion regarding the proposed summonses, and that the judge had dismissed the case without notifying complainant.

Subsequently, one defendant filed a motion to dismiss for failure to effectuate service and for lack of prosecution, to which complainant filed an untimely opposition. In the spring of 2023, the judge issued a lengthy order dismissing complainant's case without prejudice, explaining that complainant failed to file proposed summonses and to effectuate service, as there was no support for complainant's statement that she had served defendants through a third party. The court entered judgment for defendants on the same day.

The misconduct complaint is meritless. Complainant provides and the record includes no support whatsoever for complainant's conclusory allegation that the judge was disabled, had a financial or other conflict of interest, made false statements, engaged in bribery or perjury, retaliated against complainant, or was otherwise improperly motivated in presiding over or dismissing complainant's case. To the contrary, the record of the proceeding demonstrates that the judge issued detailed and reasoned orders, explaining why complainant's attempts at service were deficient, providing complainant multiple opportunities to effect service properly, and outlining the grounds for dismissal of the case. See supra pp. 3-4.

There is also no indication in the record that the judge concealed the bias of court staff in the court's order addressing the typographical error on the summonses.<sup>3</sup> To the contrary, the record indicates that the error was included on the summonses filed by complainant and that the judge reminded complainant to review her proposed summonses for accuracy. See supra p. 3. Further, complainant's assertion that the judge used language, in an unidentified letter, identical to that used in letters in complainant's other cases would not indicate obstruction of justice or any other illicit motivation. 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).

Where, as here, there is no evidence of bias or other improper judicial motive, complainant's objections to the judge's orders directing complainant to file proposed summonses, concluding that complainant had not effected service properly or filed proposed summonses, and dismissing the case 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 . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."), and Commentary to 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.

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<sup>3</sup> Although not necessary to the dismissal of the complaint, the typographical error on the summonses does not indicate that court staff was in any way biased against complainant. See infra note 4.

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 . . . ."), and Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related."). Therefore, 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).

Further, complainant's assertions that the court did not issue the corrected summonses or notify complainant of the dismissal of her case do not indicate misconduct on the part of the judge, as 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 (also explaining that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff (citing 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct)).<sup>4</sup> Therefore, the complaint is dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Finally, complainant should be warned that the filing of another baseless or repetitive judicial misconduct complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See supra note 1, and

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<sup>4</sup> Although not necessary to the dismissal of the complaint, the record indicates that complainant never filed the proposed summonses required for the clerk of court to issue updated summonses. See supra pp. 3-4. Further, while complainant alleges that the court never notified her of the dismissal of her case, which she purports occurred in early 2023 (assertions that she also made in the context of her civil case), the record indicates that the case was dismissed in the spring of 2023 and that the court mailed complainant a copy of the order of dismissal. See supra pp. 2 and 4.

Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . .").

For the reasons stated, Complaint No. 01-22-90015 is dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), (B), and (D).

January 11, 2024  
Date

  
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Chief Judge Barron