

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90016

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: MAY 20, 2024

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with complainant's civil case, over which the judge presided. The misconduct complaint is frivolous and not cognizable.¹

Complainant alleges that, in presiding over his civil case, the judge engaged in "misprison of a felony" by protecting unnamed judges who have committed crimes, and by "sweep[ing]" the evidence of such crimes "under the rug."

The reviewed record, including the misconduct complaint and the docket of the relevant proceeding, provides no evidence to support complainant's allegations of judicial wrongdoing. Complainant filed pro se a civil case against an attorney and numerous First

¹ This is complainant's third misconduct complaint. In complainant's first and second misconduct complaints, he alleged that two district judges engaged in misconduct in connection with another of complainant's civil cases and that three appellate judges engaged in misconduct in connection with complainant's related petition for writ of mandamus. See Judicial Misconduct Complaints Nos. 01-23-90007 - 90008 and 01-23-90011 - 90013. The complaints were dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii). See Barron, C.C.J., Order, In Re: Judicial Misconduct Complaints Nos. 01-23-90007 - 90008 and 01-23-90011 - 90013 (October 26, 2023).

Circuit district and appellate judges, alleging that defendants engaged in a conspiracy against him; a motion requesting appointment of judge, in which he asserted that none of the defendant judges could preside over the case; and a motion to proceed in forma pauperis. All of the judges of the district court in which the case was filed recused from the matter, and the case was assigned to a district judge and the subject magistrate judge. The magistrate judge granted the motion to proceed in forma pauperis for purposes of waiving the filing fee and denied the motion for appointment of a judge, explaining that all of the judges from the district in which the case was filed had recused and that complainant could move for recusal of any circuit judges if an appeal of the matter was filed.

Subsequently, the magistrate judge entered a lengthy report and recommendation recommending that the claims against the judge defendants be dismissed on the ground of judicial immunity, that the federal claims against the attorney defendant be dismissed for failure to state a claim, and that the court decline to exercise supplemental jurisdiction over and dismiss the state claims against the attorney defendant for lack of subject matter jurisdiction. Complainant filed a timely objection in which he asserted, in part, that the magistrate judge made unsupported legal conclusions and ignored complainant's evidence. Noting the court's consideration of complainant's objection, the district judge entered an order adopting the report and recommendation and dismissing the case, and the court entered judgment.

The misconduct complaint and the record of the proceeding provide no support for complainant's conclusory allegations that the judge engaged in any criminal activity,

concealed evidence of crimes, or was otherwise improperly motivated in presiding over complainant's case. Moreover, the record shows that the judge issued a lengthy report and recommendation explaining, in detail, the grounds for recommending that complainant's case be dismissed. See supra p. 2. 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).

Where, as here, there is no evidence of improper judicial motivation, complainant's objections to the court's rulings, including, but not limited to, the judge's report and recommendation and denial of complainant's motion for appointment of a judge, 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 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. 01-23-90016 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 (C).

May 20, 2024

Date



Chief Judge Barron