

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-23-90017, 01-23-90022 – 01-23-90023, and 01-23-90039 –
01-23-90042

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: APRIL 18, 2024

Complainant, a pro se litigant, has filed three complaints under 28 U.S.C. § 351(a) against four district judges and one magistrate judge in the First Circuit.¹ Complainant identifies five civil cases, over which at least one of the named judges, except one of the district judges, presided.² The misconduct complaints are baseless and not cognizable.

Complainant's primary allegation is that the judges have unreasonably delayed her cases. Complainant first filed a complaint against the magistrate judge (Complaint No. 01-23-90017) arising from two cases, alleging that, "as a policy of docket management," the court has delayed ruling on complainant's motions for a preliminary injunction until they can be dismissed as moot. Complainant asserts that none of her filings have been

¹ The first complaint (No. 01-23-90017) was filed against the magistrate judge; the second complaint (Nos. 01-23-90022 – 01-23-90023) includes allegations against one district judge (Judge No. 1) and the magistrate judge; and the third complaint (Nos. 01-23-90039 – 01-23-90042) includes allegations against the four district judges (Judges Nos. 1, 2, 3, and 4).

² Judge No. 4 presided over another of complainant's civil proceedings, which, although not identified by complainant, is presumed to underly the complaint against this judge.

considered by the court for years, a delay that will compound the "length [and] complexity of future litigation."

In her second complaint (Complaint Nos. 01-23-90022 – 01-23-90023), complainant alleges that one district judge (Judge No. 1) and the magistrate judge imposed a stay on her filings "ostensibly to outsource" her competency evaluation to a third-party attorney and in "blatant violation" of federal law. Complainant notes that, although her pending cases with the court have progressed since she has been appointed a Guardian ad Litem (GAL), this appointment is "just another hurdle [she] has to jump through."

In the third complaint (Complaint Nos. 01-23-90039 – 01-23-90042), complainant reiterates the claim of inexcusable delay in her civil cases, and asserts that the four district judges (Judges Nos. 1, 2, 3, and 4) are "using" the fact that complainant took a competency plea in a state court criminal proceeding "as an excuse to ignore [her]." Complainant adds that the judges "tried to resolve the issue by hiring a GAL," thereby excluding her and her filings.³

The reviewed record, including the misconduct complaints and dockets of the relevant proceedings, provides no basis for complainant's allegations of judicial misconduct.

³ Complainant seems to include misconduct allegations against her appointed Guardian ad Litem. However, the governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against federal judges only. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h). Therefore, these allegations are not addressed.

Complainant's Proceedings

More than four years ago, complainant commenced a series of overlapping pro se civil proceedings against a state department of corrections, multiple other state agencies, and others, arising from her incarceration initially in a state correctional facility, and alleging, in part, violations of her federal constitutional rights. After complainant was transferred from a state county jail to a health care facility, as she had requested, the magistrate judge entered a report in complainant's **first case** finding that complainant's requests were moot and recommending that complainant's many motions be denied without prejudice to refiling if future circumstances so warrant, which Judge No. 2 approved. Thereafter, the magistrate judge entered an order staying the case until the state court completed its evaluation and determination as to whether complainant should be civilly committed. During the approximately 18-month stay, complainant filed multiple motions, which Judge No. 2 denied without prejudice to refiling once the stay is lifted. Thereafter, the magistrate judge lifted the stay, and complainant filed a motion for reconsideration of the order denying her requests for a preliminary injunction, which Judge No. 2 construed as a motion to amend her complaint and granted. Several months later, complainant filed a motion asserting that she had been denied access to needed legal materials, and, in response to the magistrate judge's order to contact the prison, defense counsel reported that the department of corrections had indicated complainant had access to all needed materials.

Meanwhile, several months after filing the first case, complainant filed a **second case** against state agencies and their employees, asserting, in part, that defendants violated her constitutional rights in connection with a state court criminal proceeding. A number of months later, the magistrate judge entered a multiple-page report recommending that the court dismiss one claim in its entirety, dismiss the other claims to the extent that they sought relief against defendants in their official capacity, and dismiss the case as to specific defendants. Over complainant's objection, Judge No. 3 approved the report and recommendation. Thereafter, this case was also stayed by the magistrate judge, pending the state court's evaluation and determination as to whether complainant should be civilly committed, and, after the stay was lifted, the magistrate judge ordered defendants to file their answer. As with the first case, complainant filed many motions during the stay, which the court denied without prejudice to their renewal or refiling. After the stay was lifted, complainant filed multiple motions, and defendants filed replies and a motion to dismiss for failure to state a claim.

Complainant filed, two months after filing the second proceeding, a **third case**, a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, and included two motions for summary judgment.⁴ A number of months later, the magistrate judge entered a report recommending that the motions for summary judgment be denied as premature, which another district judge (who was not named in the pending complaints) approved. The magistrate judge entered the same order staying the case pending the state court's

⁴ This case was not identified by complainant on the judicial misconduct complaint form, but was presided over by Judge No. 4. See supra note 2.

civil commitment evaluation that was entered in the other cases, see supra pp. 3-4, and the case was reassigned to Judge No. 4, who denied complainant's pending motions without prejudice to refiling or renewal following the lifting of the stay. After the stay was lifted upon complainant's request, Judge No. 4 entered a multiple-page order requiring complainant to show cause why the habeas action should not be dismissed as moot, denying complainant's motions for preliminary injunctive relief without prejudice, and directing the clerk's office to open a new § 1983 case using the motions for a preliminary injunction to initiate the complaint. See infra p. 5.

The following year, complainant filed her **fourth case**, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the legality and constitutionality of her state court civil commitment.

Several months after the fourth case was filed and pursuant to the court's order issued in the third case directing the clerk's office to open a new § 1983 case, see supra p. 5, complainant's **fifth case** was opened against a state, the state's correctional department, and the state attorney general, alleging constitutional violations arising from complainant's conditions of her confinement at the facility to which she had been transferred, see supra p. 3, and complainant filed multiple motions for relief. Finally, complainant filed a **sixth case** against family and other individuals, requesting a temporary restraining order and other relief.

Several months after complainant's sixth case was filed, the magistrate judge entered an order in all of complainant's cases directing the clerk's office to appoint a GAL

and staying the cases for the GAL, who is also an attorney, to assist the court in determining whether it should take steps to protect complainant's rights under Federal Rule of Civil Procedure 17(c). Thereafter, the presiding judges denied or terminated all pending motions without prejudice while the matter was stayed, and Judges Nos. 1 and 2 in complainant's fourth and sixth cases, respectively, overruled an objection that complainant filed to the order staying the case.

Analysis

The misconduct complaints are without merit. The complaints and lengthy record of complainant's cases provide no facts indicating that any of the judges were improperly motivated in presiding over complainant's cases. To the contrary, the judges' and magistrate judge's numerous and reasoned orders, issued over a number of years in complainant's multiple proceedings, demonstrate that the court carefully considered the pleadings, stayed the cases and appointed a GAL in order to protect complainant's rights, liberally construed complainant's pleadings, and permitted complainant to refile motions once the stay was lifted. See supra pp. 3-6. There is likewise no indication that the judges have "ignored" complainant or her filings, violated federal law in connection with the competency evaluation or otherwise, or engaged in any other wrongdoing in handling complainant's cases. Therefore, the complaints are dismissed as baseless, 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)(D).

Where, as here, there is no evidence of improper judicial motive, complainant's allegation of delay is without merit. See Rules of Judicial-Conduct, 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.").

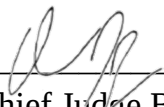
Insofar as the complaints are based on complainant's disagreement with orders issued in her cases, including, but not limited to, those staying the cases and denying her motions, they are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation 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."). Accordingly, the complaints are 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 Nos. 01-23-90017, 01-23-90022 – 01-23-90023, and 01-23-90039 – 01-23-90042 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 (D).

As complainant has filed three baseless judicial misconduct complaints against a total of five judges, see supra note 1, complainant is warned that the filing of another

baseless judicial misconduct complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See 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")

April 18, 2024
Date



Chief Judge Barron