

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-23-90018

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: SEPTEMBER 10, 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 the judge's exercise of administrative responsibilities and handling of complainant's civil case over which the district judge presided.<sup>1</sup> The misconduct complaint is baseless and not cognizable.

Complainant, a white male, alleges that, in presiding over his case, the judge was prejudiced against him, because of complainant's race and gender. Complainant prefaces the allegations regarding the judge's handling of his case with a claim that, in previously overseeing certain of the court's educational programs, the judge demonstrated "prejudice against white males and preferential treatment towards black people and females[,] and, thereby, held a leadership position in an organization that "practices invidious

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<sup>1</sup> In the misconduct complaint, complainant seems to include allegations against another judge in the First Circuit but does not identify the judge as a subject 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, 3(h), and 6. These allegations are not addressed, and complainant was notified that the complaint was accepted against the subject judge only.

discrimination," in violation of Canon 2(C) of the Code of Conduct for U.S. Judges (Code of Conduct).<sup>2</sup> Based on observations of images on publicly available websites regarding the programs, complainant asserts that, while the judge oversaw the programs, there were very few participants who were white males.<sup>3</sup>

Presenting his allegations concerning the judge's handling of his case "[i]n light of this background regarding [the judge's] history of invidious discrimination against white males, and preference for black people, and females," complainant alleges that the judge demonstrated a "deep-seated antagonism against [him] that interfered with [the judge's] ability to be fair and impartial." Essentially, complainant asserts that, motivated by racial and gender bias, the judge wrongfully determined that orders issued in connection with complainant's previous case (over which another judge presided) were legitimate, although complainant maintains that this prior case "arose from a fraud on the court." Complainant charges that, relying on these invalid rulings from the prior case, the judge wrongfully dismissed complainant's proceeding on the basis of res judicata.

Specifically, complainant contends that the judge improperly determined that complainant had filed the previous action, although his pleadings demonstrated that he did not. Complainant similarly asserts that, because defendant's counsel in the prior action was black, the judge determined that a fraudulent stipulation of dismissal filed

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<sup>2</sup> Canon 2(C) of the Code of Conduct for U.S. Judges (Code of Conduct) provides that "[a] judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin."

<sup>3</sup> Complainant explains that he reached out to staff involved with the programs for further information on the selection process but received no response.

without complainant's authorization in the previous action was "legitimate" and "refused to accept" information indicating that the stipulation was fraudulent. Complainant concludes that, by "ignor[ing] the truth" and relying on "false facts alleged by [ ] defendants," including the "fraudulent" voluntary dismissal of a prior case, the judge "propagated false material facts and contradicted [the Federal Rules of Civil Procedure] because of [a] racial and sexist animus towards white men."

Complainant further alleges that, in ruling that complainant was prohibited from bringing an independent action seeking relief from the first proceeding and dismissing complainant's case, the judge misapplied the Federal Rules of Civil Procedure and applied a "more stringent standard for pleading fraud" in complainant's case than in other cited cases. Further, complainant adds that, by allowing, nunc pro tunc, his motion for an extension of time to file his Second Amended Complaint (SAC), the judge intentionally misled complainant, causing him to "rush" to submit an "incomplete" SAC by the original deadline, rather than working on an opposition to defendants' pending motion to dismiss, and causing him to infer incorrectly that he was entitled to file a third amended complaint. Complainant surmises that the judge waited to notify him that he was granted an extension of time to file his SAC because the judge wanted "to deprive him of the benefits of the extension as part of [an] 'anti-racist' political ideology." Complainant states that, after the third amended complaint was struck and "[f]earing that [the judge] could dismiss his claims at any time," he "rushed" to file a motion for leave to file an amended complaint that was then denied in a footnote in the order dismissing the case "as

part of [the judge's] 'anti-bias' ideology . . . to act[] unjustly against white men . . . ."

Complainant concludes that the judge's "documented history of animus against white males, and preferential treatment for black people resulted in a pattern of aversion to the truth that severely prejudiced [complainant]."

As an initial matter, complainant's claims that the judge engaged in racial and gender discrimination in connection with the court's educational programs are baseless, and, as such, do not indicate that the judge violated Canon 2(C) of the Code of Conduct or support complainant's claims that the judge exhibited bias in handling his case.<sup>4</sup>

Complainant's assertion of discrimination in the programs' selection process is based exclusively upon his determination of participants' identities from images on websites. As explained in the Code of Conduct,

Whether an organization practices invidious discrimination . . . cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. *See New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members.

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<sup>4</sup> A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Code of Conduct, Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."); Rules of Judicial-Conduct, Commentary on Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act [28 U.S.C. § 351, et seq.] and these Rules . . . .").

Thus, the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Code of Conduct, Commentary on Canon 2(C).

Complainant offers no facts whatsoever to support the claim that, under the judge's leadership, either of the programs practiced invidious discrimination or that the judge did so in connection with the programs. Lacking any facts or information about each program's selection process, goals, potential participants, and other "relevant circumstances," and based exclusively on his observations of certain publicly available information, complainant infers the "absence of diverse membership," which itself, even if accurate, would not alone demonstrate that the programs "arbitrarily exclude[] from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership." See Code of Conduct, Commentary on Canon 2(C).

The programs' solicitation materials request no demographic information concerning race or gender, and initial selections are conducted by volunteer court staff, with final decisions made at group meetings with staff and one or more judges. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) (authorizing the chief circuit judge to conduct a limited inquiry). As they lack sufficient evidence to raise an inference that misconduct has occurred, complainant's

allegations of judicial bias related to the court's educational programs is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Turning to the allegations regarding complainant's case, the reviewed record, including the misconduct complaint, as well as the docket, pleadings, orders, and transcripts of the underlying proceeding, fails to support complainant's allegations of judicial wrongdoing. According to the record, complainant filed pro se a civil case against his prior employer, and against an attorney and a separate law firm, both of which had previously represented complainant, alleging, in part, fraud. After two defendants filed a motion for a more definite statement, explaining that the voluminous civil complaint failed to present a short and plain statement, complainant filed an objection to the motion and an amended complaint, after which some defendants filed a motion to dismiss for failure to state a claim, and another defendant filed a motion for a more definite statement.

The judge granted the first motion for a more definite statement, struck the original, operative complaint, and ordered complainant to file an amended complaint (SAC) in compliance with the Federal Rules of Civil Procedure and local rules. The following day, the judge denied the second motion for a more definite statement as moot, struck the amended complaint for the same reasons as the original complaint, and denied the motion to dismiss without prejudice.

One day before the deadline to file the SAC, complainant filed a motion for an extension of time, and the following day, while the motion was pending, complainant filed the SAC. Subsequently, several defendants filed motions to dismiss for failure to state a claim, asserting in part that complainant's action was time barred and barred by claim preclusion in light of the dismissal of complainant's previous civil case, which was dismissed by joint stipulation more than a decade earlier. Complainant filed oppositions to the motions to dismiss, asserting in part that he did not have a full and fair opportunity to litigate his claims in the previous case because he did not authorize the stipulation of dismissal and that fraudulent concealment tolled the statute of limitations, and defendants moved for leave to respond to the oppositions (including a proposed reply).

The judge granted complainant's request for an extension of time to amend the complaint, nunc pro tunc, and defendants' motion for leave to reply to complainant's oppositions, and scheduled a hearing on the pending motions to dismiss. The next day, complainant filed a third amended complaint, which defendants moved to strike due to complainant's failure to request or obtain leave of court.

At the motion hearing, the judge took the motions to dismiss under advisement and granted the motion to strike the third amended complaint. While the motions to dismiss were pending, complainant filed another motion to amend the complaint, which defendants opposed, and the court granted complainant's two motions to file a reply to defendants' oppositions.

In a lengthy order dismissing the case, the judge first discussed the standard of review governing a motion to dismiss for failure to state a claim and provided the factual background, based on the SAC, and the procedural history of the case, noting that complainant's third amended complaint was struck due to his failure to obtain leave of court to file a further amended complaint. The judge explained that, as to certain defendants, complainant's case was barred by claim preclusion, based on the prior action involving the same parties and causes of action that was terminated by a joint stipulation of dismissal with prejudice. See supra p. 7. The court addressed explicitly complainant's contention that he had been denied a full and fair opportunity to litigate his claims in the prior action, explaining that the filing of a motion challenging the earlier judgment is needed to bar application of the claim preclusion doctrine and that complainant did not allege sufficient facts that he was denied due process in the prior proceeding.

As to the remaining defendants, the judge determined that complainant's claims were time barred and that, in viewing the facts in the light most favorable to complainant, complainant failed to demonstrate that fraudulent concealment tolled his claims. Further, the judge detailed the elements of each of complainant's claims against these defendants and the reasons that the facts, as alleged, were inadequate and dismissed them for failure to state a claim. For the reasons described in the lengthy order, the judge granted the motions to dismiss and dismissed the case under the doctrine of claim preclusion, and for expiration of the applicable statutes of limitations and failure to state a claim.



The misconduct complaint is meritless. There is no evidence in the complaint or in the record to support complainant's allegations that the judge was prejudiced against complainant because of his race, gender, or for any other reason, perpetuated false information or an "anti-racist" political ideology, intentionally misled complainant or contradicted the applicable law, violated complainant's rights, or engaged in any other wrongdoing. Instead, the record demonstrates that the judge issued a reasoned order explaining the deficiencies in complainant's pleading and permitted him to file an amended complaint, granted complainant an extension of time to amend the complaint nunc pro tunc since complainant filed the amended complaint before receiving a ruling on his motion, and entered a lengthy order of dismissal that detailed complainant's claims and the legal principles that informed the court's rulings. See supra pp. 6-8. Therefore, the allegations concerning the judge's handling of complainant's case, as well as those concerning the court's educational programs, see supra pp. 5-6, are 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 judge's rulings, including, but not limited to, the rulings granting defendants' motion for a more definite statement and complainant's request for an extension of time nunc pro tunc, and dismissing the case, and therefore, 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 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."). 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. 01-23-90018 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).

September 10, 2024  
Date

  
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Chief Judge Barron