

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90019

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JUNE 14, 2024

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 that the judge engaged in judicial misconduct while presiding over his civil proceeding. The misconduct complaint is baseless and not cognizable.

Complainant alleges that, in presiding over complainant's civil case, the judge violated the Code of Conduct for U.S. Judges (Code of Conduct),¹ was biased against him, and engaged in conduct that was prejudicial to the effective and expeditious administration of the business of the courts and that undermined public confidence in the integrity and impartiality of the courts. Specifically, complainant alleges that the judge violated the Code of Conduct, see supra note 1, exhibited bias, and "created an

¹ Complainant alleges violations of Canons 1, 2, 2A, and 3 of the Code of Conduct for U.S. Judges (Code of Conduct). See Code of Conduct, Canon 1 (providing in part that "[a] judge should uphold the integrity and independence of the judiciary"), Canon 2 (providing in part that "[a] judge should avoid impropriety and the appearance of impropriety in all activities"), Canon 2A (providing that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"), and Canon 3 (providing in part that "[a] judge should perform the duties of the office fairly, impartially[,] and diligently").

appearance of bias" against complainant during a motion hearing when the judge failed to acknowledge or question defense counsel about violations of a state statute regarding personal jurisdiction. In further support of the judge's appearance of bias during the hearing, complainant asserts that the judge "treated [him] discourteously" by rolling the judge's eyes and "scoff[ing]" at complainant's arguments.

Complainant further alleges that, by allowing the courtroom staff to be "distracted" during the hearing, the judge did not provide complainant an uninterrupted opportunity to present his arguments. Citing to specific portions of the hearing transcript during which complainant referenced an exhibit to his civil complaint, complainant asserts that the judge ignored the evidence he presented both during the hearing and with his civil complaint. Complainant further alleges that the judge employed "intimidation tactics" in an effort to obtain complainant's agreement to transfer his case to another federal district court by stating, during the hearing, that, if complainant did not consent to the transfer, the court would dismiss the case, although the judge should have provided the option to mediate the case.

Complainant objects to the judge's order transferring his case, asserting that he did not agree to the transfer, as required. Complainant further alleges that, in the order, the judge included false or misleading statements regarding complainant's claims, and again ignored defendant's violation of state law regarding personal jurisdiction and the evidence complainant submitted in support of his civil claims, see supra p. 2.

Complainant requests that the Judicial Council properly apply state law regarding personal jurisdiction in his case.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b).

The reviewed record, including the misconduct complaint and attachments, the docket of the underlying proceeding, and the transcript of the relevant hearing, provides no evidence to support complainant's allegations of judicial wrongdoing. Complainant filed pro se a civil case in a First Circuit U.S. district court, alleging, in part, that defendant, a school located outside of the First Circuit where complainant was enrolled in a hybrid educational program, discriminated against him.

Defendant filed a motion to dismiss for lack of personal jurisdiction, or in the alternative, for forum non conveniens. Complainant filed a request that the court hold a hearing on the motion to dismiss and an opposition to the motion, asserting that the court had personal jurisdiction over defendant because, among other reasons, defendant committed a tort upon him while he resided within the district. The judge granted the request for a hearing, and, with leave of court, defendant filed a reply in support of the motion to dismiss, and complainant filed a sur-reply, in which he argued that the court had personal jurisdiction over defendant pursuant to a state statute.

The judge held a hearing at which defendant's counsel argued that the case should be dismissed for lack of personal jurisdiction, and complainant countered that the court had jurisdiction because, among other reasons, defendant committed tortious conduct upon complainant while he was present in the district, and presented the merits of his

discrimination claim at length, referencing an exhibit to his civil complaint. A few minutes into complainant's presentation, the judge briefly interjected, asking court staff to adjust the courtroom cameras in order for one of defendant's counsel, who was attending the argument remotely, to be able to see complainant and remarked that the court hoped the interruption had not caused complainant to lose his place in his argument. After complainant spoke at length, the judge thanked him for providing the background of his claims, and explained that the purpose of the hearing was to resolve the motion to dismiss, not the merits of the case, and that, based on the information presented by the parties, the appropriate jurisdiction for the case was the district in which defendant is located. The judge then stated that complainant could either consent to the transfer or the court could rule on the motion to dismiss. Complainant did not consent to the transfer, and the judge took the motion under advisement.

Subsequently, the judge issued a lengthy memorandum and order transferring the case to the district in which defendant was located and detailing the legal grounds for the ruling. In the memorandum and order, the judge also briefly outlined some details of complainant's claims, citing exhibits to complainant's civil complaint.

Neither the complaint nor the record support complainant's allegations that, in presiding over complainant's case, the judge was biased against complainant, violated the Code of Conduct, or engaged in conduct that was prejudicial to the work of the courts or undermined the public confidence in the courts.² The transcript of the hearing dispels

² 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

complainant's allegations that the judge ignored complainant's evidence, treated complainant discourteously, or otherwise exhibited bias or the appearance thereof during the hearing. The record indicates that the judge allowed complainant to speak at length both about his opposition to the transfer and the merits of his case and, despite complainant's allegation to the contrary, heard from defendant on the jurisdiction issue. See supra pp. 3-4. The technical issue that apparently required a brief interruption to complainant's argument in no way evidences discourtesy, let alone judicial bias or other wrongdoing. Nor is there any evidence of "intimidation" by the judge, as the transcript of the hearing demonstrates that the judge explained to complainant that, based on the information presented by both parties, the court lacked jurisdiction and provided his options for proceeding with the case. See supra p. 4.

Likewise, there is no evidence that the judge included false or misleading statements in the memorandum and order transferring complainant's case; nor is the order in any way indicative of bias or judicial animus. In the lengthy order, the judge summarized complainant's claims, citing exhibits to complainant's civil complaint, and detailed the legal grounds for the court's lack of personal jurisdiction. See supra p. 4.

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).

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 [of Conduct] should lead to disciplinary action."); and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Commentary to 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 and these Rules . . .").

Where, as here, there is no evidence of bias, judicial animus, or improper motive, complainant's objections to the judge's memorandum and order transferring complainant's 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."). 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. 01-23-90019 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).

June 14, 2024

Date



Chief Judge Barron