

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-23-90020

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: AUGUST 26, 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 his three civil cases over which the judge presided. The misconduct complaint is baseless, not cognizable, and not indicative of misconduct.

Complainant alleges that, while presiding over complainant's three cases, the judge engaged in "potential" favoritism and "possible" discrimination against complainant due to his pro se status. Complainant further alleges that the judge disregarded the judge's judicial duties, resulting in delay and "failure[] to issue necessary mandates" in complainant's cases, effectively denying complainant "the opportunity to seek appropriate redress," and undermining the public's trust in the legal system.

As to the first case, complainant objects to the judge's dismissal of the case several months after it was opened and asserts that, in dismissing the case, the judge focused on complainant's allegations of professional misconduct against attorneys, while "callously

disregard[ing]" the property law issues that were "vital" to the case. Complainant asserts that the "selective nature" of the judge's order of dismissal raises concerns regarding the judge's fairness and impartiality.

Complainant asserts that the judge improperly failed to resolve the second case on its merits. Complainant further states that, after he requested that his case be remanded to state court, the judge "claimed to have already issued" a remand order, even though the judge had entered only an order of dismissal. Complainant states that the judge's decision to issue mandate in the case, after initially denying complainant's request to do so and days after complainant filed this misconduct complaint, "demonstrate[s] potential bias" and negatively impacted his state proceeding.

Complainant contends that the judge "assumed control" of the third case and then "flagrant[ly] fail[ed] to resolve [complainant's] post-judgment motion," causing him to lose the opportunity to file an appeal in state court. Complainant additionally asserts that the judge's "intentional" failure to issue mandate in the third case "may [have been] influenced by political affiliations or interests." Complainant states that the judge's decision to deny complainant's request to issue mandate and "annul" state court orders in the third case, even though the judge issued a mandate in the second case, "underscore the [judge's] inconsistencies and potential partiality."

Complainant requests that the judge recuse from complainant's cases and that they be reheard by a different judge.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case, including recusal of a judge or reassignment of 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). There is no evidence in the complaint, relevant attachments, or dockets of the proceedings that support complainant's claims that the judge engaged in any judicial wrongdoing.

### **The First Case**

The record indicates that complainant pro se filed a civil action against state judges, several government entities, a number of attorneys, and various other individuals alleging that defendants engaged in a conspiracy against him in connection with a state court real property proceeding; complainant also filed a motion for leave to proceed in forma pauperis (IFP), followed by an amended complaint, a motion to appoint the U.S. Marshals Service to serve the complaint, and a motion to appoint counsel. Less than a month later, complainant filed two motions informing the court that all of his motions were pending, and the court noted the informative motions approximately a month thereafter. Weeks later, complainant filed a motion requesting that his pending motions be referred to another judge.

Two months after complainant filed the motion requesting another judge, the judge issued a multiple-page opinion and order, summarizing complainant's claims and sua sponte dismissing the case without prejudice for failure to state a claim on which relief may be granted, explaining that the court could not determine the factual basis,

legal theories, or grounds for jurisdiction upon which complainant relied, and stating that it also appeared that the court lacked subject-matter jurisdiction and was not the appropriate body to hear complainant's allegations about professional misconduct of the attorneys involved in the state court proceeding. Complainant filed a motion for reconsideration of the dismissal order, which the judge denied, noting that complainant could appeal the dismissal order. Subsequently, complainant filed a motion for leave to appeal IFP, which the judge granted.

### **The Second Case**

The record indicates that, several years after the dismissal of the first case, complainant pro se filed a notice of removal of an estate proceeding to the federal district court and requested leave to proceed IFP. Less than a year later, the judge dismissed the complaint sua sponte for failure to state a claim, explaining that complainant failed to provide any basis for federal jurisdiction and that removal was untimely, denied the motion for leave to proceed IFP, and entered judgment dismissing the case with prejudice.

A number of months after the case was dismissed, complainant filed a motion requesting that the court remand the case to the state court and issue mandate, which the judge denied six months later, explaining that the court had entered judgment dismissing the action.

Less than two months after denying complainant's motion for remand, the court sua sponte entered: (1) an order liberally construing complainant's motion for remand as a

motion requesting relief from final judgment due to a mistake and correcting the judgment to remand the case to state court; (2) an order vacating and setting aside the judgment and the order denying the motion to remand; and (3) an amended judgment dismissing the case without prejudice and remanding the case to state court for further proceedings. Subsequently, complainant filed a motion for the judge's recusal, asserting, among other things, an appearance of partiality and a conflict of interest, and improper delay, which the judge denied a few weeks later.

### **The Third Case**

The record indicates that, the same year the second case was filed, complainant filed a second notice of removal to the federal district court of the state court proceeding underlying the first case, see supra pp. 3-4, and requested leave to proceed IFP. A district judge who is not the subject of this complaint, entered orders remanding the case to the state court, as removal was untimely, and finding the motion to proceed IFP to be moot. Complainant filed a motion for reconsideration of the order remanding the case, and the case was reassigned to the subject judge, due to the unavailability of the other judge. Complainant then filed a motion to supplement the reconsideration motion and a motion for declaratory relief, both of which the judge denied a number of months later. Several months thereafter, complainant filed a motion for reconsideration of the order denying his prior motion for reconsideration, which the judge denied days later for failure to show that reconsideration was warranted.

## **Analysis**

The misconduct complaint is without merit. There is no information in the complaint or the record to support complainant's allegations that the judge discriminated against complainant due to his indigent status or for any other reason, engaged in favoritism, disregarded judicial duties, was motivated by political interests, or was otherwise improperly motivated or engaged in any other judicial wrongdoing in presiding over complainant's cases. To the contrary, the record indicates that the judge addressed complainant's pleadings, and issued multiple, reasoned orders, some of which were in complainant's favor, demonstrating that the judge considered complainant's filings and liberally construed his claims. See supra pp. 3-5.

Likewise, none of the judge's orders or rulings are remotely indicative of bias or other improper judicial motive. Specifically, the judge's order vacating a previous order and judgment in the second case, and issuing an amended judgment remanding the case to state court does not indicate judicial partiality. See supra pp. 4-5. Further, complainant's allegation that the judge handled the second and third cases "inconsistently," by issuing mandate in the second, but not in third, is not supported by the record, and, even if true, would not be indicative of misconduct. See supra pp. 4-5. Additionally, complainant's assertion that the judge improperly took over handling complainant's third case is belied by the record, as the subject judge was assigned to the case in accordance with the court's procedures after another judge, who was originally presiding over the case, was no longer available. See supra p. 5. Therefore, the complaint

is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and (A).

Where, as here, there is no evidence of bias or other improper judicial motive, complainant's objections to the court's rulings, including, but not limited to, the dismissal of the first and second cases, denial of post-judgment motions in each case, and issuance of an amended judgment remanding the second case to the state court,<sup>1</sup> 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."). The same is true for complainant's allegation that the judge improperly delayed complainant's cases. See id. 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."). Accordingly, the complaint is dismissed as not cognizable,

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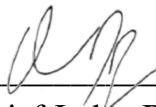
<sup>1</sup> Any error that the judge made in the original judgment dismissing the second case and the judge's subsequent correction would not be indicative of misconduct. See supra pp. 4-5, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90016, April 16, 2014, at p. 5 (alleged minor set of errors did no more than call into question correctness of judge's ruling and did not constitute cognizable misconduct).

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. 01-23-90020 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).

August 26, 2024

Date

  
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Chief Judge Barron