JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-23-90021 and 01-23-90030

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: MAY 15, 2024

Complainant, a pro se litigant, has filed two complaints under 28 U.S.C. § 351(a), one against a district judge and one against an appellate judge in the First Circuit. Complainant alleges judicial misconduct in connection with his civil case and related appeal, over which the district judge and appellate judge preside, respectively.[1] The misconduct complaints are baseless, not cognizable, and not indicative of misconduct.

Complainant alleges that, in presiding over three hearings in his case, the district judge engaged in a pattern of discrimination against complainant based on his pro se

[1] These are complainant's fourth and fifth misconduct complaints, respectively. In complainant's first complaint, he alleged misconduct against a district judge and a magistrate judge in connection with another of complainant's civil cases. The misconduct complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the First Circuit Judicial Council affirmed the order of dismissal. Complainant also filed a misconduct complaint against three First Circuit appellate judges and a district judge, sitting by designation in the First Circuit, in connection with cases over which they presided. The complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), (ii), and (iii), and the First Circuit Judicial Council affirmed the order of dismissal. Complainant filed a third misconduct complaint against one of the subject judges of his first misconduct complaint, repeating allegations from that complaint and alleging misconduct in connection with the civil case underlying the present matter, and against an appellate judge, alleging misconduct in dismissing the first misconduct complaint. The complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii).

status, sex, and gender, and "forced" him to have pro bono counsel who did not support his case and to accept a settlement.[2]

Complainant alleges that, at the first hearing, the judge "demonstrated an egregious and hostile manner" by using the hearing that was scheduled to discuss a motion to dismiss to deny complainant his right to proceed pro se, and "insist[ing]" that the court "could not afford" the expense of the case. Complainant further alleges that, at the second hearing, the judge gave "special fast attention" to counsel for defendants, while dismissing complainant's motions in his absence, and suggests that the judge engaged in improper ex parte communication.

Complainant asserts that, at the third hearing, the judge "forbid" complainant's multiple requests to continue pro se, even though appointed counsel consistently agreed with defendants, and "intimidated" complainant with potential monetary sanctions. Complainant further suggests that, in answering a question that complainant's family member was permitted to ask the court in a language other than English without a translator present, the judge "act[ed] on beha[lf] of the defendant." Complainant also alleges that, at the hearing, the judge "false[ly]" claimed to misunderstand his lawsuit.

[2] In the supporting documents, complainant seems to include allegations against another district judge 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 complaints were accepted against the subject district judge and appellate judge, respectively. Complainant also seems to include allegations against attorneys involved in his cases and a defendant in his underlying case; as the governing statute and the Rules of Judicial-Conduct provide for the filing of complaints against federal judges only, these allegations are not addressed. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1 and 3(h).

Complainant appears to assert that the district judge delayed production of the transcript of the third hearing by enforcing the court's policy regarding requests to redact official court transcripts.[3]

With respect to the appellate judge, complainant alleges that, in an order entered in complainant's appeal, the judge treated him "in a demonstrably egregious and hostile manner" and discriminated against him on the basis of his sex and gender by failing to address his allegations that he was "forced" to have counsel. Complainant further asserts that the appellate judge retaliated against him, and "used [the judge's] position of power" to interfere with his case and "to eliminate and leave no trace" of this pattern of discrimination and retaliation.

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

Complainant's Proceedings

Complainant filed pro se a civil case against a bank and two of its employees, which was reassigned to the subject district judge. Defendants filed a motion to dismiss for failure to comply with the pleading requirements and to state a plausible claim for

[3] Complainant seems to allege that the court reporters' transcripts do not accurately reflect the hearings in his case. Neither the complaint, nor the record, provides any support for this conclusory allegation. See infra pp. 3-6. Moreover, the conduct of court staff in exercising their administrative duties is not attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7 (explaining that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff (citing 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct)).

which relief can be granted, which complainant opposed, and the judge scheduled the first hearing on the motion to dismiss.

At the first hearing, the district judge explained that the court wanted to meet with the parties to understand better the case and work toward a mutually agreeable resolution. Thereafter, the judge confirmed that complainant was comfortable proceeding with the hearing and then requested that he explain his claim, asking multiple clarifying questions; the court further noted that the court must read complainant's allegations liberally, in light of his pro se status. While asking defendants to explain their position, the district judge stated that the court wanted to avoid unnecessary expense for both parties, noting the high costs of litigation.

After both parties presented their arguments, the judge appointed pro bono counsel for complainant, complainant indicated that he did not have the resources for counsel, and the court clarified that counsel was appointed for free. The judge remarked that complainant had presented a claim upon which relief could be granted, granted in part and denied in part defendants' motion to dismiss, and recommended that the parties engage in settlement negotiations or mediation.

Complainant submitted numerous motions to proceed pro se and other pleadings regarding the appointment of counsel, and the judge either denied or noted each of the filings and ordered complainant to meet with counsel. Subsequently, complainant filed a number of other motions to proceed pro se and regarding his pro bono counsel in which

he asserted, in part, that counsel does not agree with his lawsuit and proposed an unauthorized settlement.

At the second hearing, at which counsel for all parties were present but complainant was absent, complainant's counsel explained that she had been unable to contact complainant. The district judge stated that the court had intended to explain to complainant that allowing him to proceed without counsel would be prejudicial, and counsel for all parties agreed with the court that it would be best to hold another hearing with complainant. Additionally, at the request of counsel for defendants, the court ordered complainant to file and notify his motions through counsel.

Several days later, the court held the third hearing at which the judge explained to complainant that, after thoroughly studying his pleadings, the court had concluded that, due to the complex claims, appointment of counsel was in complainant's best interests and his due process rights would be at risk if he were allowed to proceed pro se, but that the court was confident that the parties could reach a mutually beneficial settlement. The judge also listened to complainant's position, explained the legal issues, and answered complainant's questions without making any rulings. Although complainant's counsel indicated that she agreed that complainant has a legitimate claim, complainant maintained that his attorney disagrees with the main point of his case.

Also at this hearing, complainant asked permission for a family member to speak to the court in a language other than English, which the judge permitted the person to do off the record, noting that typically a procedural request is made for a translator. After a

brief recess for complainant and his counsel to confer, counsel requested to withdraw, explaining that complainant insisted on continuing pro se. The court did not rule on the request to withdraw, denied complainant's request to proceed pro se, referred the case for a settlement conference before a magistrate judge, and noted that the court could impose monetary sanctions for violations of the court's orders. Thereafter, the judge entered multiple orders noting complainant's pending pro se filings and determining them to be moot.

Complainant appealed the district court's denial of his request to proceed pro se and filed a motion requesting, in part, production of the transcript of the third hearing at the government's expense, which the district court granted. After the transcript was produced, the court notified the parties of the deadline to file notices of intent to request redaction of the transcript and of the court's policy regarding public release of transcripts. After each of the parties filed a notice of intent to request redaction of the transcript and corrections were made at the request of defendants, the redacted transcript was made publicly available in accordance with court policy.

In his appeal, complainant filed multiple motions asking to suspend certain appellate rules for good cause, in which he asserted, in part, that the district court had improperly imposed pro bono counsel. The subject appellate judge issued an order denying the motions, finding that complainant had not specified which rules he would have the Court suspend or give any reasons for the request, and explaining, with respect to complainant's challenge to the appointment of pro bono counsel, that, if complainant

intended to seek a stay of the district court proceedings during the appeal, he should file a motion with the district court. Both the district and appellate proceedings remain pending.

Analysis

The misconduct complaints are without merit. There is no evidence in the complaints or in the record that either judge discriminated against complainant based on his gender or pro se status, or for any other reason, treated complainant in an egregious and hostile manner, or otherwise was improperly motivated in presiding over complainant's cases. To the contrary, the record of the district court proceeding indicates that the district judge considered complainant's numerous pleadings, appointed pro bono counsel to represent complainant, held multiple hearings at which complainant was afforded the full opportunity to present his claims and concerns, and explained repeatedly why appointment of counsel was in complainant's best interests. See supra pp. 4-6.

Complainant's specific claims – that the district judge "insisted" that the court could not afford the expense of complainant's case, "forced" him to accept a settlement, "intimidated" him with possible fines, and "false[ly]" claimed to misunderstand his case – are dispelled by the record, which demonstrates that the judge expressed concerns about the cost of the litigation for both parties, repeatedly explained the court's understanding of complainant's cause of action and reasons for appointing counsel to represent him, and referred the parties to mediation in an effort to resolve the dispute. See supra pp. 4-6. Any allegations that the district judge engaged in improper ex parte communication or gave preferential treatment to defendants in complainant's absence at the second hearing is also

belied by the record, as complainant's attorney was in attendance and the court made no substantive determinations. See supra p. 5. Further, there is no information in the relevant complaint or the record indicating that, in answering a question from complainant's relative in a language other than English without a translator present, the district judge "act[ed] on beha[lf] of the defendant" or otherwise exhibited bias.[4] See supra p. 5.

Likewise, the record of complainant's appeal indicates that the appellate judge considered complainant's multiple motions and the underlying record, issued a reasoned order noting the deficiencies in the motions, and advised complainant of the option to request a stay of the district court proceedings during the pendency of the appeal. See supra pp. 6-7. 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 bias or improper judicial motive, complainant's objections to the courts' orders, including the appointment of counsel, denial of complainant's motions to proceed pro se, directing the parties to engage in mediation, requiring complainant to file through counsel, permitting complainant's relative to converse with the court, and denying complainant's numerous motions on appeal, 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

[4] The substance of this purported conversation is neither on the record nor described in the complaint. See supra pp. 2-6.

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 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).

Finally, complainant's assertion that the district judge delayed production of a transcript does not indicate misconduct on the part of the judge, as court staff released the transcripts in exercising their administrative duties under court policy. See supra p. 6 and note 3. Therefore, the complaints are dismissed as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint Nos. 01-23-90021 and 01-23-90030 are 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).

May 15, 2024
Date

Chief Judge Barron