

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-23-90024 and
COMPLAINT NOS. 01-24-90009 and 01-24-90010

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: APRIL 22, 2025

Complainant, a pro se litigant, has filed two complaints under 28 U.S.C. § 351(a) against two district judges in the First Circuit.¹ Complainant alleges judicial misconduct in connection with two criminal proceedings over which both district judges presided. The misconduct complaints are baseless, not indicative of misconduct, and not cognizable.

Complaints

Allegations against the First Judge

Complainant alleges that the first judge acted in an egregiously hostile manner and restricted his access to the courts by precluding him from submitting further pro se filings without leave of court. Complainant maintains that the judge forgot that the court had allowed complainant's request for an extension of time in which to reply to the

¹ Judicial Misconduct Complaint No. 01-23-90024 was filed against one judge, and Judicial Misconduct Complaint Nos. 01-24-90009 – 01-24-90010 was filed against both judges.

government's responses to certain of complainant's motions, and that, although the court allowed him to submit a reply, after he reminded the judge of the extension, the court did not consider his submission.

Complainant further asserts that the judge ignored his filings, including, but not limited to, his motion to correct a clerical error in a judgment and reply to the government's responses to certain of complainant's motions. Additionally, complainant contends that the judge issued inconsistent rulings that reflected ignorance of the applicable law at complainant's sentencing and at a subsequent hearing.² Complainant objects to the court's: denial of his multiple requests for counsel and hearings, without explanation; statement to complainant that he was represented by counsel, although counsel had not yet been appointed; and rejection of a letter filed in support of complainant. Complainant additionally asserts that several of the judge's findings were factually incorrect, including, but not limited to, that he was receiving a sentence reduction, and that the judge has "no regard for the execution of [his] sentence," as demonstrated, in part, by the denial of his requests to remain in state custody. Complainant also alleges that the judge's decision to send a probation officer to his family's home misled him to believe that the court was "seriously considering [his] release."

Further, complainant alleges that the judge was improperly motivated in habitually delaying issuing decisions in his case, noting that, following a motion hearing, the judge

² Complainant asserts that, at complainant's sentencing, the first judge stated that, "by allowing [the] terms of his plea to be changed, [he] would have only one sentence," but, at a subsequent hearing, "assert[ed] that the aggregation of [his] two sentences created a single sentence."

remarked that, "[t]his time you won't have to wait so long." Complainant also asserts that the judge ordered court staff not to docket his motion for the judge's recusal and that the first judge's reassignment of the case to the second judge, after the first judge had recused, reflects bias and constitutes misconduct.³

Allegations against the Second Judge

As to the second judge, complainant alleges that the judge acted in an egregiously hostile manner by continuing the first judge's prohibition on complainant's submitting pro se filings without leave of court, providing him no opportunity for redress, and further delaying his case. Complainant asserts that the judge should have recognized that the first judge's order reassigning the case to the second judge is evidence of bias.

Request for Relief

Complainant requests reassignment of his cases to another judge.

Discussion

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including reassignment to another judge. 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 complaints,

³ Complainant includes misconduct allegations against court staff, his appointed attorney, and counsel for the government. 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). Nonetheless, there is no support in either the complaints or the records for complainant's allegations that court staff improperly failed to docket complainant's motion for recusal and erred in returning pro se documents to him. See infra p. 8.

dockets of the proceedings, or relevant transcripts to support complainant's claims of judicial wrongdoing.

Case Records

The reviewed record demonstrates that, while on supervised release, complainant was charged with a new criminal offense, and the new criminal and violation of supervised release matters were assigned to the first judge. Complainant, who was represented by counsel, admitted to the violation of his supervised release and pleaded guilty to the new criminal offense. At the sentencing hearing regarding both matters, complainant's counsel requested that the court first impose the sentence in the revocation matter, followed by the sentence for the new criminal matter, on the ground that this sequence may provide the opportunity for better healthcare and treatment for complainant. After confirming that the government did not object to complainant's proposal, the judge acknowledged that defense counsel made a convincing argument that the proposed sequence would result in complainant's being subject to only one sentence and may allow for greater flexibility. The court orally sentenced complainant to imprisonment for the new criminal matter consecutive to incarceration for the revocation matter, with credit for time served.

The first judge entered a judgment in each case; the judgment in the new criminal matter was consistent with the sentencing hearing, providing that the sentence was to be served after that imposed in the revocation matter, but the judgment in the revocation matter provided that the sentence for the new criminal matter would be served first.

A few months later, complainant requested appointment of counsel in the revocation matter for the purpose of filing a motion for compassionate release, and the first judge granted the motion and appointed counsel.⁴ Complainant filed pro se a number of pleadings, including a motion to correct the judgment in the revocation matter asserting, in part, that it was inconsistent with the agreement reached during the sentencing hearing and that the error made him ineligible for certain sentence reductions. Months later, complainant filed pro se several pleadings requesting his immediate release.

Meanwhile, after being appointed counsel in the new criminal matter, see supra note 4, complainant filed pro se a motion for compassionate release, and complainant's counsel filed a supplement, requesting that the court reduce his sentence to time served in light of his worsening medical condition, both of which the government opposed. Complainant filed pro se a motion to correct the judgment identical to that filed in the revocation matter, the government filed an opposition, and complainant filed a reply. See supra p. 5. Subsequently, complainant's counsel filed a motion to withdraw and to permit complainant to proceed pro se, which the first judge granted.

At complainant's request, the court held a hearing on complainant's pending motions in the new criminal matter, at which the first judge granted complainant's motion for leave to supplement his motion for compassionate release, which was filed on the

⁴ This counsel, who was appointed in both the new criminal and the revocation matters, asked to withdraw from both cases, which a magistrate judge allowed and appointed new counsel for the purpose of filing a motion for compassionate release in the new criminal matter. Subsequently, this counsel was terminated, and the first judge appointed new counsel for the same purpose.

same day as the hearing, and took the remaining motions under advisement. Over the next several months, complainant filed numerous documents requesting, in part, his immediate release, reappointment of counsel, to vacate the judgment or to impose a single sentence, and for an evidentiary hearing.

Thereafter, the first judge denied two of complainant's motions requesting release; granted his initial motion to correct the judgment in the revocation matter to state that the sentence for the revocation matter is to run prior to the sentence in the new criminal matter and finding that the original judgment in the revocation had an error; and denied complainant's motions for appointment of counsel, explaining that there is no right to counsel for motions for compassionate release. The court then scheduled a hearing to address, in part, complainant's motions for compassionate release (and counsel's supplement), for an evidentiary hearing, and to vacate his sentence.

After the court scheduled the hearing, the government filed a consolidated response in opposition to the motions that were to be heard, and complainant filed a motion for an extension of time to file a reply, which the first judge granted. Complainant then filed numerous letters, motions, and notices, and a family member filed a letter in his support, which was returned as the court does not accept filings by a non-case participant, after which the court ordered that the parties refrain from filing any documents until all pending motions had been ruled upon.

At the motions hearing, complainant explained that, although the court had granted him an extension to file a reply to the government's opposition to the motions at issue in the hearing, he had not done so because of the court's order that the parties

refrain from filing any documents. The first judge allowed complainant to file the reply and to decide whether to postpone or proceed with the hearing, and complainant chose to proceed. Complainant then requested that the court vacate his sentences, dismiss the revocation violation, and impose a single sentence, as his aggregated sentences prevent him from eligibility for a sentence reduction. The government responded that the structure of the sentences did not affect complainant's access to any early release programs. In discussing the issue with the parties, the first judge remarked that the court understood that an aggregated sentence was considered one sentence and, at the end of the hearing, took the motions under advisement. Thereafter, complainant filed a motion requesting an evidentiary hearing on his motion to vacate and appointment of counsel for that hearing, and to be transferred to state custody.

The next month, the first judge, in a lengthy order, denied complainant's motion for compassionate release, concluding that complainant did not set forth extraordinary and compelling circumstances to warrant the requested relief, denied his alternative request to be resentenced to a single term, explaining, in part, that the court accepts the representation from the government that complainant received sentence reductions, and denied his requests to vacate, for an evidentiary hearing, and for appointment of counsel. In the order, the first judge also restricted complainant from filing any additional documents challenging, modifying, or affecting his conviction or sentence without permission of the court, highlighting that complainant filed over 100 documents since his sentencing. Complainant appealed the order and, a week later, filed in the district court a motion for leave to file a motion for reconsideration of the denial of his motions for

counsel and for an evidentiary hearing. The first judge granted the requests for leave, for reconsideration, for an evidentiary hearing, and for appointed counsel for that hearing. The following day, complainant filed an emergency motion, again requesting that counsel be appointed, and the court denied the motion without prejudice, stating that motions must be filed through counsel.

Months later, the first judge recused, and the cases were reassigned to the second judge, who entered an order explaining that the first judge's order prohibiting filings without leave of court remains in effect, that the court has limited jurisdiction because of complainant's pending appeal, and that counsel will be appointed once the appeal is resolved. Subsequently, the clerk's office returned documents to complainant with a copy of this order, complainant filed a letter asking why his pleadings, including a motion to recuse, were not docketed, and the clerk's office responded that the filings were returned due to the court's orders precluding him from submitting pro se filings.

Complainant thereafter filed motions for appointment of counsel, for issuance of a writ to be in state custody, and for reconsideration of the second judge's order prohibiting him from submitting further filings. The second judge issued an order denying complainant's motions; the court further noted that it reviews all of complainant's filings and has rejected them substantively and as improperly filed.

After complainant's appeal was voluntarily dismissed, see supra p. 7, complainant filed several motions, including for appointment of counsel in the revocation matter. The second judge appointed counsel in both cases and ordered counsel to file a proposed schedule for briefing and an evidentiary hearing. The next month, the second judge

recused, and the case was reassigned to a third judge before whom the cases remain pending.

Analysis

The misconduct complaints have no merit. There is no evidence in the complaints, records, or relevant transcripts to support the allegations that first judge was hostile toward complainant, ignored his motion to correct the judgment and other filings, restricted his access to the courts, or was otherwise improperly motivated. To the contrary, the records reflect that the first judge considered complainant's pleadings and requests, granted several of his motions, including the motions to correct the judgment and for appointment of counsel, held hearings on complainant's pro se motions at which the court heard from complainant at length, and entered a lengthy order explaining the reasons for the denial of his requests for compassionate release and to be sentenced to a single term, as well as for complainant's filing restrictions. See supra pp. 4-8.

Further, the first judge's statements regarding complainant's sentences at the sentencing and motions hearings do not indicate an improper judicial motive or other judicial misconduct. The record indicates that, at the hearings, the first judge heard at length from complainant and the government regarding the preferred sequencing of complainant's sentences. See supra pp. 4 and 6-7. Likewise, neither the court's purported directing of a probation officer to visit complainant's family's home, if true, nor the

court's order reassigning complainant's case to the second judge is indicative of bias or other judicial misconduct.⁵

There is likewise nothing in the complaints or the records to suggest that the second judge was hostile toward complainant, denied him an opportunity for redress, or was otherwise improperly motivated while presiding over complainant's cases. Instead, the records of complainant's cases indicate that the judge entered orders appointing him counsel in both matters and explaining to complainant that, although he was precluded from submitting further filings, the court reviewed his improperly filed submissions. See supra p. 8. Furthermore, as the reassignment of complainant's case to the second judge does not evidence bias or misconduct, there was no impropriety for the second judge to "recognize" or to address. See Rules of Judicial-Conduct, Rule 4(a)(6) ("Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability."). Therefore, the complaints are dismissed as baseless and not indicative of misconduct, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and (i), respectively. See also Rules of Judicial-Conduct, Rule 11(c)(1)(D) and (A).

In the absence of any bias, improper judicial motive, or other judicial wrongdoing, complainant's objections to the substance and timing of the courts' rulings, including, but not limited to, the sentences imposed, preclusion of further pro se filings without leave of court, denial of complainant's motions for counsel, hearings, and his immediate release,

⁵ The first judge's order of recusal does not indicate to whom the case was reassigned. The docket entry notes for the order of recusal, entered by court staff, indicate that the case was reassigned to the second judge by order of the first judge.

and temporary restriction of both parties' filings, are not cognizable. The same is true for complainant's allegation that the judges improperly delayed complainant's cases. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also Rules of Judicial-Conduct, Rule 4(b)(1) and (2) ("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. . . . 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."), 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.").⁶ 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 No. 01-23-90024 and Complaint Nos. 01-24-90009 and 01-24-90010 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), respectively.

As complainant has filed two meritless misconduct complaints, complainant is warned that the filing of another baseless or repetitive judicial misconduct complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of

⁶ The claim that the first judge adversely remarked, "[t]his time you won't have to wait so long," after a hearing, would not, if true, evidence an improper judicial motive. See supra pp. 6-7.

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 22, 2025

Date

A handwritten signature in black ink, appearing to be 'CB', is written over a horizontal line.

Chief Judge Barron