

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-23-90025

BEFORE  
Barron, Chief Circuit Judge

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ORDER

ENTERED: NOVEMBER 18, 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 civil case over which the judge presided. The misconduct complaint is frivolous, baseless, and not cognizable.

Complainant alleges that, on or about a specified date several months after complainant filed his case, he received a phone call from a blocked phone number "(whom [complainant has] reason to believe was [the judge])," during which the caller "threatened" him "to stop investigating or conducting any diligence" presumably with respect to his civil case. Complainant submits that, in making this call, the person complainant has reason to believe was the judge was improperly motivated, engaged in improper ex parte communication with a party to a case, treated complainant in a demonstrably egregious and hostile manner, engaged in actions that are prejudicial to the effective and expeditious administration of the business of the courts, and delayed a particular decision issued in his case. In apparent support of the allegation that the judge

made this phone call, complainant asserts that, prior to the call, he had discussed his case with an attorney from a firm at which the judge previously worked, and provides purported information from his phone records indicating that a former intern of the judge, who is now in private practice, called him on the same date that he received the judge's phone call.

Complainant also asserts that the judge ignored complainant's case, as well as unidentified "parallel" cases, failed to rule on complainant's filings in the time prescribed by the Federal Rules of Civil Procedure, and, ultimately, determined improperly that all of complainant's pleadings were moot. Complainant states that, because the judge's order granting his motion for an extension of time to file an opposition to defendants' motion for a protective order was entered on the same date that the opposition would have been due under the proposed extension, he did not have enough time to file a timely response.

Further, complainant raises a number of objections to the judge's order dismissing his case. Specifically, complainant asserts that the judge ignored relevant facts and relied on flawed reasoning and legal bases in granting defendants' motion to dismiss.

Complainant also seems to question the timing of the issuance of this order, stating that it was entered the same day that an order entered in complainant's state court matter.

Complainant further asserts that the judge did not have authority to issue the order dismissing his case, apparently because complainant had received a refund of the filing fee for the case. Complainant asserts that the judge failed to fulfill judicial duties and deprived complainant of equal justice under the law, and that the court has contributed to "defalcations, embezzlements, frauds, [and] depredations . . . of the federal fisc."

Complainant requests that the Court of Appeals issue a writ suspending the collection of all fees in all First Circuit courts, in part, because title to one of its courthouses and the land upon which it sits is "clouded," that the judge's order dismissing his civil case and the order in his state court matter be vacated, and any other such relief that the Court "deems just and equitable."<sup>1</sup>

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for vacating orders in a federal or state court case, or for the suspension of court fees, as complainant requests. 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, and the docket of the proceeding, provides no support for complainant's allegations of judicial misconduct. According to the record, complainant filed a civil action against a private company (the private defendant), two state entities and specified employees thereof (the state defendants), and numerous unnamed individuals, alleging, among other things, violations of due process, equal protection, and the Americans with Disabilities Act, in connection with complainant's professional disciplinary proceeding. Complainant subsequently filed an amended complaint and a motion requesting that the court reissue summonses, in response to which the judge directed that summonses be

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<sup>1</sup> Complainant seems to state that numerous other individuals, including federal court staff, staff of two state attorney discipline bodies, and a state government official, engaged in misconduct. The governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints against current 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 complaint or the record for complainant's only specific allegation against court staff -- that they made threatening phone calls to him from blocked numbers.

reissued for the named defendants and that no summonses be issued for the unnamed defendants unless they were identified and joined to the case.

After executed summonses were returned for the named defendants, the private defendant filed a motion to dismiss for failure to state a claim, which included a supporting affidavit, asserting, in part, that no allegations directly implicate the defendant, and complainant filed a motion to convert the motion to dismiss to a motion for summary judgment, to strike the affidavit, or to enlarge time for complainant to file an opposition, to which defendant objected. The judge denied complainant's requests to convert the motion or strike the affidavit, but allowed complainant additional time to respond to the motion to dismiss, and complainant filed an opposition.

The state defendants also filed a motion to dismiss, asserting, in part, that the federal court was required to abstain from adjudicating complainant's challenge to an ongoing state disciplinary proceeding. Complainant filed an opposition to the motion to dismiss, followed by two motions to amend his opposition, one of which included a proposed amended opposition, and the judge allowed the request to amend and accepted the proposed amended opposition for consideration with the state defendants' motion to dismiss.

While defendants' motions to dismiss were pending, the state defendants filed a motion for a protective order quashing a discovery request that complainant had served on them and/or that the court stay discovery in light of the pending motions to dismiss, complainant requested an extension of time to file a response to the motion, and the judge

allowed complainant's request on the last day of the proposed additional period. On the same day the order allowing the motion to extend entered, complainant filed an objection to the order, asserting, in part, that he did not have enough time to file his response to the motion for a protective order and requesting an additional extension, and subsequently, filed a second objection to the order allowing the extension and to other of the court's orders, in which he argued that the judge applied local rules in contravention of federal rules. Complainant also filed an emergency motion for a temporary restraining order and preliminary injunction staying his state disciplinary proceeding, which the state defendants opposed, as well as a motion requesting that the court sanction the state defendants for spoliation of evidence, and, approximately a month later, a letter requesting that the court rule on the motions.

A few weeks after complainant filed the letter, the judge issued a lengthy electronic order addressing: (1) defendants' motions to dismiss; (2) the state defendants' motion for a protective order; and (3) complainant's motion for a preliminary injunction.<sup>2</sup> After accepting the allegations included in complainant's amended complaint and providing the factual background of the proceeding, the judge granted the private defendant's motion to dismiss for failure to state a claim because complainant brought forth no allegations that legally implicate defendant. The judge also granted the state defendants' motion to dismiss explaining that the federal court was required to abstain

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<sup>2</sup> In doing so, the court also addressed one of complainant's motions to file an amended opposition to the state defendants' motion to dismiss, *see supra* p. 4, granting the request nunc pro tunc and considering complainant's proposed amended opposition in ruling on the state defendants' motion to dismiss.

from complainant's challenge to his state proceeding, detailed why the exception to this requirement did not apply, and dismissed complainant's claim for damages based on sovereign immunity. Further, the judge denied complainant's motion for a temporary restraining order and preliminary injunction, as complainant failed to show a reasonable likelihood of success on the merits, denied as moot the state defendants' motion for a protective order, and denied complainant's motions for sanctions and for a further extension in which to respond to complainant's motion for a protective order. Subsequently, complainant filed a letter requesting that the filing fee that he paid in connection with the case be returned to him.

The misconduct complaint is meritless. Complainant's allegation that the judge called complainant, and thereby exhibited hostility or engaged in improper ex parte communication, is presented with no basis in fact. Complainant offers and the record provides no evidence of the threatening phone call or that supports complainant's "reason [for] believ[ing]" the judge was responsible for any such call. Complainant's reference to an alleged phone conversation with an attorney from the judge's previous law firm and purported information from his phone records allegedly indicating a call from a prior intern of the judge in no way support his claim that the judge called him.<sup>3</sup> Nor is there any basis for complainant's allegation that the judge contributed to the misuse of federal funds. Where, as here, the "allegations are [both] facially incredible [and] so lacking in indicia of reliability[,] . . . no further inquiry is warranted." See Rules of Judicial-

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<sup>3</sup> Complainant does not provide a phone record, but includes a footnote in the text of the complaint with the time, phone number, and name of the alleged prior intern.

Conduct, Commentary on Rule 11. Accordingly, these allegations are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Further, there is no support in the complaint or the record for complainant's allegations that the judge exceeded judicial authority, deprived complainant of his rights, failed to fulfill judicial duties, ignored complainant's case or arguments, or was otherwise improperly motivated in granting defendants' motions to dismiss or in presiding over the case. Contrary to these allegations, the record indicates that the judge considered complainant's pleadings, granted several of complainant's requests, and issued a lengthy order, acknowledging complainant's arguments and detailing the bases for the court's rulings. See supra pp. 4-6. Accordingly, the misconduct 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).

Where, as here, there is no evidence of improper judicial motivation, complainant's objections to the timing or substance of the court's orders, including, but not limited to, the order granting complainant an extension of time to file a response to the state defendants' motion for a protective order and the order granting defendants' motions to dismiss, are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and 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 . . . or improper conduct . . . 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 case. See Rules of Judicial-Conduct, 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, 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. 01-23-90025 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), (C), and (D), respectively.

November 18, 2024  
Date

  
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Chief Judge Barron