JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-24-90001 – 01-24-90002

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JUNE 9, 2025

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against two district judges in the First Circuit. Complainant alleges that the judges engaged in judicial misconduct in connection with two related habeas matters over which the judges presided, respectively. The misconduct complaint is baseless and not cognizable.

Complaint

Complainant alleges that the first judge has conspired with government officials and judges against complainant by contravening federal statutory and case law. Complainant states that he filed a motion for the first judge's recusal, which documents the judge's "history of violating established case law in order to . . . prevent [complainant] from addressing the violation of [his] constitutional rights at the state level."[1]

[1] Complainant attaches the motion for recusal to his misconduct complaint.

Complainant further alleges that the second judge is also part of the conspiracy against him. Complainant asserts that, in an order dismissing his petition for writ of habeas corpus, the judge: (1) included an incomplete definition of a critical term in the applicable habeas statute; (2) committed perjury and fraud by stating that he was never placed on probation in connection with the state court matter underlying his habeas proceeding; and (3) misled the Court of Appeals by stating that complainant had not exhausted his claims in the state court and by failing to acknowledge that the state court refused to provide necessary records for his appeal to proceed. Complainant further speculates that the second judge may have engaged in ex parte communications with the respondent in his habeas matter in order to "seek out evidence to negatively affect [his] petition [for writ of habeas corpus]," as demonstrated by the judge's noting in the order of dismissal that complainant did not file a request for an extension to file a transcript in the state court. Complainant also asserts that the judge ignored complainant's arguments that his habeas petition was not time barred. Complainant additionally alleges that the judge prejudiced him in the Court of Appeals by fraudulently misrepresenting the date of the denial of his motion to proceed in forma pauperis and refused to take any action to remedy that misrepresentation.

Complainant requests that the judges be disciplined and prohibited from presiding over his cases.

Discussion

As an initial matter, the judicial misconduct procedure does not provide an avenue for prohibiting a judge from presiding over specific cases. 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). Further, disciplinary action is not available, where, as here, complainant's allegations are not substantiated by the record and are not cognizable. See id.

The First Case

The reviewed record demonstrates that complainant's petition for writ habeas corpus was transferred from a federal district court outside of the First Circuit to a First Circuit district court, and the first judge was assigned to the matter. The next month, complainant filed a motion for the judge's recusal from the case and all future matters in which complainant is a party, see supra note 1, arguing that the judge has a history of bias, objecting to various rulings that the judge has made in other cases involving complainant, and asserting that these rulings are evidence of a pattern of the judge's disregard of the law that creates an appearance of bias against complainant. The judge denied the motion. Complainant appealed the order denying his motion for recusal, and, after the appeal was dismissed for lack of prosecution, filed a motion in the district court requesting that the proceedings continue, after which the judge ordered the clerk of court to serve the petition and respondent to file an answer. Respondent filed a motion to dismiss, asserting, in part, that the petition is time barred and that complainant failed to exhaust some of the claims as required, and complainant filed an opposition to the motion.

The judge entered an order dismissing the petition as untimely, without addressing the merits, and stating that a certificate of appealability would issue. Complainant filed a

motion for reconsideration, which the judge denied, and a notice of appeal of the dismissal order. Upon the Court of Appeals' request that the district court specify as to which issue the certificate of appealability was issued, the judge entered an order specifying that the certificate of appealability was limited to the issue of the timeliness of the petition.

The Second Case

The reviewed record further indicates that a second petition for writ habeas corpus filed by complainant was transferred to a First Circuit district court, and the second judge was assigned to the matter. A few months later, complainant filed a motion that the case proceed, and the judge ordered the clerk of court to serve the petition and respondent to file an answer, and denied the motion as moot. Respondent filed a motion to dismiss, on the same grounds included in its motion to dismiss the previous habeas matter, see supra p. 3, and complainant filed an opposition.

The second judge entered a multiple-page memorandum and order granting respondent's motion to dismiss and declining to issue a certificate of appealability. In the order, the judge discussed the background of the case and the applicable legal standards and found that complainant was never on probation, incarcerated, or otherwise in custody in connection with the challenged order. The judge also noted in the order that complainant's claims were likely time barred or unexhausted, because, although the docket in the state court matter indicates that he filed a timely notice of appeal in the

lower court, he had failed to file timely the transcripts required for the appeal to proceed, and the court was unaware of any requests of enlargement of time to do so.

Complainant filed a notice of appeal as to the dismissal order and a motion for leave to proceed in forma pauperis (IFP) on appeal, and the judge entered an order denying the motion to proceed IFP, explaining that complainant's appeal was not taken in good faith, as there were no non-frivolous issues for appeal. The next month, complainant filed notices, alleging fraud and explaining that the postal service did not receive the court's order denying his motion to proceed IFP until weeks after it was entered and that he did not receive notice of the order, respectively. The judge entered an order stating that the court would not take any action on these notices, as the claims raised were beyond the scope of the proceeding, and that any delay in complainant's receipt of the order denying his motion to appeal IFP did not prejudice him, explaining that the Court of Appeals had denied his application for a certificate of appealability and denied his separately filed motion to proceed IFP as moot, and terminated the appeal.

Analysis

The misconduct complaint has no merit. There is no evidence in the complaint or the record that either judge conspired against complainant, attempted to hinder his cases, or otherwise was improperly motivated in presiding over his cases. To the contrary, the records of complainant's cases indicate that, after complainant requested his cases proceed, the judges ordered that his petitions for writ of habeas corpus be served and for respondent to answer, and both judges issued reasoned orders of dismissal. See supra pp. 3-5.

Likewise, there is no support in the record for the claims that the second judge engaged in perjury, fraud, or any other wrongdoing in presiding over the case, generally, or in issuing (1) the order addressing complainant's allegations of fraud with respect to the order denying his motion to proceed IFP or (2) the dismissal order. See supra pp. 4-5. Nor does the dismissal order evidence that the judge engaged in ex parte communication. See supra pp. 4-5. According to the record, in response to complainant's allegations of fraud, the second judge explained that, based on the record in the Court of Appeals, complainant was not prejudiced by any delay in his receipt of the order denying his request to proceed IFP. See supra p. 5. The record further shows that, in the multiple-page order dismissing the petition, the judge summarized the background of the case, outlined the applicable legal standards, detailed why complainant's petition failed, and explained that his claims may be time barred or unexhausted based on information included in the state court record. See supra p. 5. 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).

In the absence of any evidence of bias, improper judicial motive, or other judicial wrongdoing, complainant's objections to the substance of the courts' rulings, including, but not limited to, the dismissals of his petitions for writ of habeas corpus, denial of complainant's motion to recuse, motion for reconsideration, and motion for leave to proceed IFP, and order regarding complainant's notices of fraud, are not cognizable. 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) ("Cognizable misconduct does not include an

allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. 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 Nos. 01-24-90001 – 01-24-90002 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), respectively.

June 9, 2025
Date

Chief Judge Barron