

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-24-90004 and 01-24-90008

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: APRIL 30, 2025

Complainant, a pro se litigant, has filed two complaints under 28 U.S.C. § 351(a) against two district judges, respectively, in the First Circuit. Complainant alleges that the judges engaged in judicial misconduct in presiding over his criminal case and related 28 U.S.C. § 2255 matter. The misconduct complaints are baseless, not indicative of misconduct, and not cognizable.

Complainant alleges that, after recusing from his cases, the first judge improperly issued an order denying his motion for an extension of time for voluntary surrender. Complainant further asserts that he did not receive a copy of this order in the mail. Complainant states that "[t]here is no access to justice, when, for economic, social, political[,] or personal reasons, people are discriminated against by the law and justice systems."

Complainant alleges that the second judge, who was assigned to complainant's cases after the first judge recused, was motivated by prejudice in improperly allowing the first judge to issue the order denying his motion for an extension of time after recusing.

Complainant further alleges that, because of bias against complainant, the second judge ignored a medical certificate containing recommendations regarding complainant's medical treatment, which he includes as an attachment to the misconduct complaint. Complainant adds that there is a "pattern and trend of persecution, harassment, prejudice" and "processes plagued by irregularities, delays, [and] ambiguities" in his § 2255 case.

The complaints are meritless. The reviewed records, including the misconduct complaints and attachments and the dockets of the proceedings, provide no support for complainant's allegations of judicial wrongdoing. More than five years ago, complainant was indicted on fraud and theft of government property charges, and the first judge was assigned to the matter. Complainant pled guilty, and the first judge sentenced him to terms of imprisonment and supervised release and ordered him to self-surrender upon the U.S. Marshal's notice to do so.

Subsequently, complainant filed pro se a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, due to ineffective assistance of counsel, and the matter was assigned to the first judge, who entered an order providing the government and complainant's attorney in the criminal case time to submit responses. The government filed a motion to dismiss the matter as premature because complainant's direct criminal appeal was pending, and complainant's counsel filed a response to the ineffective assistance claims. After complainant filed a motion in which he asserted, in part, that the first judge has a conflict of interest, the judge recused, and the § 2255 and criminal matters were reassigned to the second judge.

Many months after the two cases were reassigned, complainant filed pro se a motion in the criminal matter requesting an extension of time for his voluntary surrender, in light of his ongoing medical treatment. Subsequently, an order signed by the first judge was entered denying complainant's motion for additional time, and several weeks later, the docket was modified to indicate that the order was entered in error as the case had been reassigned.

Subsequently, the second judge ordered the U.S. Probation Office to report on complainant's medical condition and treatment, the probation officer submitted a status report, and the second judge extended the time for complainant to surrender and ordered the U.S. Probation Office to update the court with any information that could affect complainant's ability to surrender. A few weeks later, complainant filed a motion, in part, providing the court with information regarding his medical treatment and its potential effect on his ability to surrender, and attaching the medical certificate that complainant includes with his misconduct complaint, and the U.S. Probation Office filed a motion informing the court that complainant was hospitalized. The second judge entered an order postponing complainant's surrender date indefinitely in light of complainant's hospitalization and ordered the U.S. Probation Office to update the court on complainant's hospitalization. Approximately a week later, the U.S. Probation Office informed the court that complainant had been discharged from the hospital, and the second judge entered an order noting and denying complainant's informative motion regarding his hospitalization and ordered complainant to surrender.

Meanwhile, in the § 2255 matter, over a nearly year-long period, complainant filed supplements to his motion to vacate, set aside, or correct his sentence; motions for a certificate of appealability, which the clerk of court noted as defective, as the § 2255 matter was pending; and, as the direct criminal appeal had been dismissed, the government filed an opposition to the § 2255 motion, to which complainant filed a reply.¹

The misconduct complaints are meritless. The record does not indicate that the first judge was improperly motivated in issuing the order denying complainant's motion for additional time to surrender after recusing from complainant's cases. According to the records, the docket was modified to indicate that the order was entered in error, and the first judge made no further rulings in either of complainant's proceedings. See supra pp. 2-4. Nor does the erroneous issuance of the order indicate judicial misconduct on the part of either judge.² Likewise, complainant's assertion that he did not receive a copy of the first judge's order denying his motion for additional time, even if true, would not be indicative of misconduct by the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7 (explaining that the conduct of court staff in exercising their administrative duties is not attributable to the judge and that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against

¹ After the misconduct complaints were filed, the second judge granted the government's motion to dismiss the § 2255 matter, and the case was dismissed with prejudice. Further, complainant filed a motion for compassionate release in the criminal matter, which the second judge denied.

² See Torruella, C.J., In Re: Judicial Misconduct Complaint Nos. 01-19-90048 and 01-19-90049 (October 8, 2020) (providing that "[n]either [a] judge's typographical error in . . . [an] order nor its subsequent correction is remotely indicative of judicial misconduct"); and see also Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90016 (April 16, 2014) (alleged minor set of errors does not constitute cognizable misconduct).

judiciary staff (citing 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct)).

Further, the record does not support complainant's allegation that the second judge was biased against complainant or otherwise improperly motivated in presiding over complainant's cases, either generally, or specifically, in addressing his requests to extend the time to self-surrender based on complainant's medical condition. In fact, the record indicates that, after receiving the information provided by complainant and the U.S. Probation Office regarding complainant's medical treatment, the second judge postponed complainant's surrender date. See supra p. 3. Accordingly, the complaints are dismissed as not indicative of misconduct and baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i) and (iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(A) and (D).

Where, as here, there is no evidence of bias or other improper judicial motive, complainant's objections to the substance and timing of the orders issued in his cases, including, but not limited to, those regarding his requests for extensions of time to surrender, 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) 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."). 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, as complainant has filed two meritless misconduct complaints, he should be 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 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 . . .").

For the reasons stated, Complaints Nos. 01-24-90004 and 01-24-90008 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).

April 30, 2025
Date



Chief Judge Barron