

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-24-90012

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 8, 2024

Complainant, a federal, non-judiciary employee, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges that the judge engaged in judicial misconduct during two encounters between the judge and complainant regarding courthouse procedures. The misconduct complaint is not indicative of misconduct.

Complainant alleges that, in a public area of the courthouse, during regular business hours, the judge "question[ed complainant] about the [courthouse] procedures . . . in a tone of voice that was elevated" and "angry," while using "facial expressions" and body language that "appeared to exert frustration." Complainant asserts that this public admonishment made complainant "very uncomfortable and embarrassed" and created what complainant "felt" to be "a hostile work environment."

Complainant further alleges that, approximately a week later, at a videoconference involving a number of judiciary and other federal employees, the judge used a "mocking/mimicking . . . tone of voice to simulate" complainant's manner of speaking

and undefined "hand gestures" when discussing the courthouse procedures.¹ Complainant asserts that the judge disrespected him in front of his colleagues and others, and that the judge's actions during the meeting created a "hostile work environment," made complainant "extremely uncomfortable and embarrassed," and "made it appear as if [complainant] was incompetent and or not performing [his] duties."

At my direction, the subject judge was asked to respond in writing to the allegations contained in the complaint. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(b) (authorizing the chief circuit judge to conduct a limited inquiry that may include, but not be limited to, written communication with the subject judge). The judge submitted a timely written response, in which the judge provided background and context for both encounters. In sum, the judge asserts that, during the first encounter, the judge did not have a raised voice, use disrespectful hand gestures, admonish complainant, or otherwise treat complainant disrespectfully, and that, during the videoconference, the judge did not mimic or treat complainant disrespectfully.

Complainant alleges that the judge embarrassed and disrespected complainant by publicly criticizing him and addressing him improperly on two occasions -- the first incident involving an angry and frustrated tone of voice, facial expressions, and body

¹ In describing the judge's alleged hand gestures in the judicial misconduct complaint, complainant references an alleged encounter that he had with a district court employee. Based on a complaint that complainant filed against the staff member, the alleged hand gestures involved rapidly and aggressively waving the judge's hand. As the judicial misconduct complaint process does not provide an avenue for filing a complaint against judiciary staff, the complaint against the employee was not accepted and complainant was informed of the procedure for submitting a complaint against staff. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct).

language, and the second incident involving mocking/mimicking of complainant and aggressive hand gestures. In this matter, there is no reason to inquire further about the factual basis of complainant's allegations because the judge's alleged behavior, even if true, would not amount to judicial misconduct. See 28 U.S.C. § 351, et seq. See also Rules of Judicial-Conduct, Commentary on Rule 11 ("Essentially, the standard [governing the chief judge's inquiry into allegations of judicial misconduct] is that used to decide motions for summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not resolved at the summary judgment stage. A material fact is one that 'might affect the outcome of the suit under the governing law,' and a dispute is 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986)). While "[c]ognizable misconduct includes . . . treating . . . judicial employees[] or others in a demonstrably egregious and hostile manner," two isolated incidents of rude or inappropriate behavior would not be sufficiently "egregious and hostile" to constitute conduct that is "prejudicial to the effective and expeditious administration of the business of the courts." See Rules of Judicial-Conduct, Rules 4(a)(2)(B) and 11(c)(1)(A); and see, e.g., Judicial Council of the Sixth Circuit, Memorandum and Order, In re: Complaint of Judicial Misconduct No. 06-19-90045 (April 12, 2021), at p. 2 ("[O]ne or two isolated incidents of the subject judge being 'extremely rude' or 'cursing and yelling' would not rise to the level of cognizable conduct under Rule 4(a)(2) concerning abusive or harassing behavior While such alleged behavior might be a violation of the [ethics] rules, it does not indicate a threat to the safety or security of any person, is not serious or

egregious such that it threatens the integrity and proper functioning of the judiciary, and does not rise to the level of misconduct under the Act." (citing Rules of Judicial-Conduct, Commentary on Rule 4)).²

Accordingly, the complaint is 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) (providing for dismissal of a complaint that alleges "conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office") and Commentary on Rule 11 (The Rules of Judicial-Conduct "permit[] dismissal of an allegation that, even if true, does not constitute misconduct . . . under the statutory standard.").

² The Code of Conduct for U.S. Judges (Code of Conduct) requires that judges perform their duties "with respect for others, . . . not engage in behavior that is harassing [or] abusive, . . . [and] be patient, dignified, respectful, and courteous to . . . [all those] with whom the judge deals in an official capacity." See Code of Conduct, Canon 3 and 3(A)(3). A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See id. Canon 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364)[, n]ot every violation of the Code [of Conduct] should lead to disciplinary action."); and Rules of Judicial-Conduct, Commentary on Rule 4 ("While the Code [of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the Act and these Rules An inadvertent, minor violation of [the Code of Conduct], promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the Act."). Complainant also brings a claim that the judge's behavior "creat[ed] a hostile work environment." See Rules of Judicial-Conduct, Rule 4(a)(2)(C). This claim is not cognizable because the relevant rule, by its terms, applies only to "judicial employees." See id.

For the reasons stated, Complaint No. 01-24-90012 is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

November 8, 2024
Date



Chief Judge Barron