

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-24-90017

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 6, 2024

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge of the First Circuit. Complainant alleges that the judge engaged in judicial misconduct in presiding over her civil proceeding. The misconduct complaint is baseless, not indicative of misconduct, and not cognizable.

Complainant alleges that the judge violated 28 U.S.C. § 455(a), a state rule of judicial conduct, and complainant's right to due process by failing to recuse sua sponte from complainant's case and intentionally delaying in notifying complainant of the judge's personal relationship with a witness who later became a defendant in the case.¹

Complainant alleges that the judge was previously the witness'/defendant's attorney, teacher, and mentor, and became her friend. Complainant asserts that the judge

¹ 28 U.S.C. § 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Although complainant cites to a state court rule providing when a judge shall disqualify him or herself from a proceeding, the Code of Conduct for U.S. Judges (Code of Conduct) applies to federal judges. Canon 3(C)(1) of the Code of Conduct provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned"

intentionally delayed disclosing this relationship for more than a year after complainant's case was filed, during which time the judge reviewed and ruled on pleadings, held several hearings, and discussed complainant's other cases with her, all as part of an "orchestrated plan" to assist in the defense of the judge's friend while taking advantage of complainant's pro se status.

Complainant further asserts that, at a hearing, the judge questioned defense counsel "with [a] raised" voice, asking "what [counsel was] going to do about" complainant's proposed amendment to add the judge's friend as a defendant to the case and inquiring why counsel had not filed an opposition to the amendment. Complainant states that, although she worked hard to draft her motion to amend the complaint, it was denied. Complainant concludes that the judge's actions are "dangerous and detrimental" to the public and that the judge has hindered all of complainant's attempts to seek justice.

The reviewed record, including the misconduct complaint, the docket of the proceeding, and the relevant transcript, provides no evidence to support complainant's allegations of judicial wrongdoing. According to the record, complainant filed pro se a civil action against a government official and mentioned a government employee several times in the statement of facts. Complainant filed a motion to proceed in forma pauperis, and the judge issued an order granting the motion and sua sponte dismissing certain of complainant's claims for lack of a private right of action. Complainant filed an amended complaint with a cover letter explaining that the amendments included only corrections to typographical and grammatical errors, and defendant filed an answer.

After the parties submitted their respective proposed pretrial schedules, the judge held a scheduling conference at which the parties presented their proposed schedules and the court scheduled a status conference, and after which the judge issued a scheduling order. On the same day as the status conference, complainant filed initial disclosures on the docket which listed the government employee, see supra p. 2, as an individual likely to have discoverable information. At the status conference, the parties reported that they were complying with the discovery schedule, and the judge set another status conference.

Prior to the next scheduled status conference, complainant filed a motion to amend the complaint, in part, to add several defendants, not including the government employee, as complainant alleged, or her employer, and to name the original defendant in an individual, as opposed to an official, capacity. At the beginning of this status conference, the judge explained that, after recently reviewing the civil complaint more closely in light of the motion to amend, the judge was disclosing that the government employee, who is mentioned a number of times in the statement of facts, was previously the judge's student and that the judge and the government employee have a close professional relationship and associate socially. The judge further explained that, although the relationship would not impact the court's ability to be impartial, complainant is entitled to know of it and to request the judge's recusal. Complainant requested additional time to decide whether to seek the judge's recusal, which the judge allowed, explaining that the judge would recuse immediately should complainant file a motion. The judge further stated that no action would be taken on complainant's motion to amend the complaint until the recusal issue was resolved, noting that defendant had not filed an opposition to the motion. Defense

counsel stated that she planned to make an oral argument regarding the motion to amend, in response to which the judge asked why she had not filed a written opposition, and counsel explained that there had been a service error.

The following day, defendant filed an opposition to complainant's motion to amend, and complainant filed a motion for the judge's recusal, which the judge promptly granted, and the case was reassigned to another judge. Subsequently, the court entered an order denying the motion to amend without prejudice, in part, because complainant failed to comply with applicable rules regarding service.

The complaint is meritless. There is no evidence to support complainant's allegations that the judge intentionally delayed disclosing the relationship to benefit the government employee, impede complainant's legal proceedings, or otherwise. The judge provided complainant the opportunity to request the judge's recusal, refrained from making any rulings until the recusal issue was resolved, and recused upon complainant's request. See id. pp. 3-4. Where, as here, there is no indication of an improper judicial motive, any error in not recusing sua sponte or in not disclosing the relationship earlier in the proceeding would not be indicative of misconduct.²

² A violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct. See Code of Conduct, 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 for Judicial-Conduct and Judicial-Disability Proceedings, Commentary to 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 [28 U.S.C. § 351, et seq.] and these Rules Even where specific, mandatory rules exist . . . the distinction between the misconduct statute and these specific, mandatory rules must be borne in mind. For example, an inadvertent, minor violation of any one of these rules, 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."). Likewise, "a violation of the disqualification statute, 28 U.S.C. § 455, is not automatically a violation of the Judicial Misconduct statute[; however,] conceivably, a sufficiently egregious

Nor does the judge's questioning of defense counsel during the status conference regarding defendant's opposition to complainant's motion to amend the complaint evidence improper motive or any other judicial wrongdoing. See supra pp. 3-4. Accordingly, the misconduct complaint is dismissed as baseless and not indicative of misconduct. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and (i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(D) and (A), respectively.

Where, as here, there is no evidence of improper judicial motive, complainant's objections to the substance and timing of the court's determinations and rulings, including the judge's decision not to recuse sua sponte and the timing of the disclosure of the judge's relationship with the government employee, and the order denying complainant's motion to amend the complaint, which was not entered by the subject judge, 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, 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. . . . 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

violation, especially if coupled with evidence of bad faith, might . . . rise to the level of judicial misconduct." See Boudin, C.C.J., Order, In Re: Complaint No. 362 (Dec. 16, 2003) (citation omitted).

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 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. 01-24-90017 is 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.

December 6, 2024
Date



Chief Judge Barron