

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-25-90028

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JULY 10, 2025

Complainant, on behalf of a public charity, has filed a complaint under 28 U.S.C. § 351(a) against Chief Judge McConnell of the U.S. District Court for the District of Rhode Island.¹ Complainant alleges that the judge engaged in judicial misconduct in not sua sponte recusing from a civil case over which the judge presides, and in overseeing a nonprofit organization as a member of its board. The misconduct complaint is not cognizable and lacks sufficient evidence to raise an inference that misconduct has occurred.²

¹ Chief Judge McConnell consented to being identified as the subject judge of this misconduct complaint. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 24(a)(1) ("[I]f [a] complaint is finally dismissed under Rule 11(c) [of the Rules of Judicial-Conduct] without the appointment of a special committee . . . the publicly available materials generally should not disclose the name of the subject judge without his or her consent.").

² After receipt of the present misconduct complaint, two members of the U.S. House of Representatives Committee on the Judiciary submitted a letter to the First Circuit Court of Appeals that referenced and included substantially identical allegations against the subject judge as those contained in the present misconduct complaint. When a chief circuit judge receives information outside of the context of a misconduct complaint filed under 28 U.S.C. § 351(a) and determines that there is "probable cause to believe that misconduct has occurred[.]" . . . the chief judge may identify a complaint." See Rules of Judicial-Conduct, Rule 5(a). Even if the information contained in the letter gave rise to a finding that there was probable cause to believe that misconduct has occurred, any resultant complaint identified would be consolidated with the present complaint, given the similarity in the allegations contained in both. In this case, there is no reason to determine whether the information in the letter gives rise to probable cause to conclude that misconduct has occurred as the present misconduct complaint is dismissed under Rule 11(c) of the

Complaint

Complainant alleges that the judge should have recused, pursuant to Canon 3 of the Code of Conduct for U.S. Judges (Code of Conduct) and 28 U.S.C. §§ 455(a) and (b)(4),³ from the civil case, which challenges a suspension of government funds, due to "a plain conflict of interest," because the judge has had "a longstanding — and possibly ongoing — affiliation with a non-profit entity that [] received [millions of dollars] in government funding" while the judge was on the organization's board of directors.

Complainant further alleges that the judge's presiding over the case creates an appearance of impropriety, in violation of Canon 2 of the Code of Conduct, and runs afoul of Canons 1 and 4 of the Code of Conduct, in light of the judge's relationship to the non-profit, and that his duty as a board member of the non-profit to act in the best interests of the organization, pursuant to relevant state law, may conflict with his obligations under the Code of Conduct.⁴ Complainant continues that "there is strong reason to suspect that" the organization "stands to receive millions of dollars in government funds" because of the

Rules of Judicial-Conduct, and, accordingly, the outcome of any complaint under Rule 5(a) based on the letter would be the same.

³ See Code of Conduct for U.S. Judges (Code of Conduct), Canon 3(C)(1)(c) (providing in relevant part that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which . . . the judge knows that the judge, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding"); and 28 U.S.C. §§ 455(a) ("Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."), and (b)(4) ("He shall also disqualify himself [when] . . . [h]e knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.").

⁴ See Code of Conduct, Canons 2 ("A judge should avoid impropriety and the appearance of impropriety in all activities."), 1 ("A judge should uphold the integrity and independence of the judiciary . . . [by] enforc[ing] high standards of conduct . . ."), and 4 ("[A] judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, [or] reflect adversely on the judge's impartiality . . ."); and *id.* Canon 4(E) Commentary ("A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict.").

judge's rulings in the case, including orders granting motions for a temporary restraining order, a preliminary injunction, and enforcement of the temporary restraining order, respectively, all of which restored payments of government funds to plaintiffs and the last of which indicated that defendants could be held in criminal contempt for failure to comply with the order. Complainant adds that these rulings "ensured" that the organization would continue to receive government funds.

In support of his assertion that the judge is disqualified from the case, complainant explains that the judge has been listed as a board member or chair on the non-profit's federal tax forms for many years,⁵ and was listed on its website as chair-emeritus while the case was pending,⁶ but was removed from the website when complainant published information "expos[ing]" the judge's conflict of interest. Complainant asserts that, regardless of whether the judge is still formally affiliated with the organization, it appears that he "continues to have a significant interest in it," which casts doubt on his ability to be impartial. Complainant further asserts that "[w]hether he continues to formally sit on the [non-profit's b]oard is only of nominal interest[, as the judge] is, if nothing else, emotionally invested in [the non-profit organization, and that a]ny person who has had such a sustained and involved position with any organization would naturally have an interest in its continued viability." Complainant continues that "[the judge] must know that his ruling in [the case] has sustained [the non-profit organization] to date, and his final ruling could either keep [it] in business or jeopardize its continued existence." For

⁵ Complainant provides links to three years of the non-profit's federal tax forms.

⁶ Complainant provides a link to an archived page of the non-profit's website listing its board members.

that reason, complainant asserts, "[i]t is hard to imagine a fact pattern that better illustrates the appearance of -- if not actual -- impropriety."

Complainant provides links to public records to support his assertion that one of the plaintiffs in the case receives government funding and then provides funds to the non-profit organization, which has received millions of dollars over approximately the last decade from the plaintiff as a "sub-awardee," as well as millions of dollars in other government funds in recent years. Complainant asserts that the non-profit "is heavily reliant on government funding," noting, for example, that, based on the organization's federal tax forms, nearly two-thirds of its revenue in one recent year arose from government grants.

Complainant also alleges that the judge may have violated Canons 2 and 4 of the Code of Conduct while carrying out fiduciary duties to the organization, as there is evidence to "suggest[] that there was grossly inadequate oversight of corporate activities during [the judge's] tenure on the . . . [b]oard that support[s the] concern" that the judge may not have the "judgment, character, and fitness to be a federal judge."⁷ Complainant states that it appears that, while chair of the board, the judge was either unaware or ignored the organization's purchase of two real properties from another board member, who has "a well-publicized history of public corruption scandals," at prices in excess of fair market value based on municipal tax records.⁸ Complainant adds that one such

⁷ See supra note 4.

⁸ Complainant cites to public records to support his statements that the individual from whom the organization purchased the real properties was a member of the organization's board and that the organization purchased the real properties from the board member at prices in excess of their respective municipal tax assessments.

transaction was not reported on the non-profit's federal tax forms, as required. Citing to news articles, complainant adds that, before the non-profit purchased the two properties, they were at issue in a public scandal involving the board member who owned them.⁹ Complainant states that, as chair of the board when these transactions occurred, the judge "had statutory and fiduciary obligations to review the terms of the purchases . . . to confirm the legitimacy of the transactions" and to ensure that the organization filed complete tax forms, and therefore, "it is appropriate to determine whether [he] exercised his affirmative duty to fully vet the transactions" and "whether he was aware that [the non-profit] filed an incomplete" tax form.

Further, complainant states that "it appears that [the organization] pays out substantial sums from its for-profit[,] low-income housing subsidiaries to unidentified 'investors.'" Complainant cites to an audit report indicating that, during one year when the judge was chair, the organization "reported [thousands of dollars] distributed as profits from subsidiary partnerships." Complainant adds that, although "the structure of [the organization's for-profit subsidiaries] is detailed in its annual audits, [to which complainant cites], . . . [t]here is an alarming lack of information regarding these

⁹ Complainant includes an appendix to the misconduct complaint and asserts that the information in the "[a]ppendix suggests that there was grossly inadequate oversight of corporate activities during [the judge's] tenure on the . . . [b]oard." In the appendix, complainant outlines the history of the board member's purported involvement in "public corruption and embezzlement scandals" and the purported illegal use of one of the real properties later purchased by the non-profit. Complainant also asserts in the appendix that public records indicate that, prior to the non-profit's purchase of the two real properties, the board member "owed significant property taxes" on both properties, as well as on a third property not purchased by the non-profit. In the appendix, complainant also states, and cites to public records in support of the assertion that, the board member who owned the property and other representatives from the non-profit applied for a permit to change the use of one of the real properties later purchased by the non-profit and that "[t]here is no suggestion in the [relevant] resolution that the [municipal zoning board] was informed that [the owner of the property] was [also] a director of [the organization]."

entities," including in a public filing regarding one of the subsidiaries to which complainant cites.

Complainant also cites to an audit report of the organization, which found "'a deficiency in internal control'" that was considered "'a material weakness'" and asserts that this audit finding "seem[s] to raise questions about the accuracy of [the non-profit's] financial statements over time, especially" when one of the above fair market value transactions occurred. See supra p. 4.

Finally, complainant, citing to local news articles and a summary of a report of a neighborhood association, states that "research suggests that [the services provided by the organization] are substandard . . . [and] deplorable." Complainant states that the judge had an "affirmative duty to . . . ensure against the . . . substandard" services and that whether he did such an investigation "warrants a thorough inquiry."

Complainant concludes that all of these "factors [regarding the organization during the judge's tenure on the board] should have caused [the judge] (1) to conduct greater oversight of the organization and (2) to determine whether . . . continued association with the organization was appropriate,"¹⁰ both of which he "[a]pparently . . . failed to do."

¹⁰ Complainant cites to Code of Conduct, Canon 4(B) Commentary, which provides that "[t]he changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate."

Analysis

Complainant first alleges misconduct based on the judge's failure to recuse. An allegation that a judge incorrectly failed to recuse is not in and of itself an allegation of cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (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, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it calls into question the merits of the decision.").¹¹

Here, complainant alleges recusal was required under 28 U.S.C. § 455(a), which sets forth "a very general standard," in requiring recusal in "any proceeding in which [the judge's] impartiality might reasonably be questioned." Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at pp. 3-4; see Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988) (addressing circumstances in which recusal is required under 28 U.S.C. § 455(a)). More than two decades ago, Chief Judge Boudin explained with respect

¹¹ See also Rules of Judicial-Conduct, Commentary on Rule 4 ("[A]n allegation that a judge conspired with a prosecutor to make a particular ruling is not merits-related, even though it 'relates' to a ruling in a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness — 'the merits' — of the ruling itself. An allegation that a judge ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive.").

to a complaint of judicial misconduct based on a judge's asserted violation of this standard as follows:

[The standard] requires a judgment call based on all of the circumstances. Accordingly, it was up to the judge in the first instance to exercise his judgment as to whether the relationship fell within the general rubric of the latter provision and, if a party to the litigation disagreed with a refusal to recuse, the ordinary remedy would be an appeal - or in extreme cases a mandamus petition - in which the judge's failure to recuse himself would be judged deferentially. See also In re Martinez-Catala, et al., 129 F.3d 213 (1st Cir. 1997). Given such deference and the generality of the standard, it would ordinarily take a relationship that was both quite recent and quite close to present a serious risk of reversal.

Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at pp. 3-4 (footnote omitted).

Chief Judge Boudin then continued as to the allegation that a failure to recuse based on this general standard constitutes judicial misconduct: "[I]t would take yet a further step -- and quite a long step -- to conclude that a judge who wrongly failed to recuse himself had committed misconduct within the meaning of our governing statute and the rules." Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at p. 4 (citing Boudin, C.C.J., Order, In Re: Complaint No. 267R3 (Dec. 18, 2001)). He reasoned that "[v]irtually all judges make mistakes and the ordinary remedy for a mistake is an appeal to a higher court." Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at p. 4. Chief Judge Boudin then concluded: "'The complaint procedure is not intended to provide a means of obtaining review of a judge's decision or ruling in a case . . . Only a court can do that.' The circumstances presented in this case, even if I were to assume (contrary to any direct proof) that the judge had a recent and close personal

relationship with the plaintiff, would not approach the extraordinary showing needed to convert a judicial action, here the failure to recuse, into misconduct." Id. (quoting Illustrative Rules Governing Complaints of Judicial Misconduct and Disability, Rule 1(e), which have been superseded by the Rules of Judicial-Conduct). See Rules of Judicial-Conduct, Commentary on Rule 4 ("Rule 4(b)(1) tracks the [judicial misconduct statute], 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations '[d]irectly related to the merits of a decision or procedural ruling.' This exclusion preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to collaterally call into question the substance of a judge's decision or procedural ruling.").

The same analysis is no less applicable here. Simply put, while complainant alleges that the judge was required to recuse from this case based on his association with the non-profit organization, the complaint does not "approach the extraordinary showing" that the judge engaged in "the type of egregious ill-motivated violation that could conceivably rise to the level of judicial misconduct" and that is "needed to convert a judicial action, here the failure to recuse, into misconduct." See Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at p. 4; and Boudin, C.C.J., Order, In Re: Complaint No. 427 (Apr. 25, 2006), at p. 3. Complainant does not directly allege, and the record provides no evidence to conclude, that the judge was improperly motivated or had some other illicit purpose for not recusing from the case.¹²

¹² While there was no motion for the judge's recusal filed in the case, the record of the proceeding does not provide evidence to support a claim that the judge was improperly motivated in presiding over the matter in general. The record indicates that the judge considered the pleadings and arguments of plaintiffs and defendants and issued

Complainant also alleges recusal was required under 28 U.S.C. § 455(b)(4), which provides that a judge must recuse when the judge "knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." See Liljeberg, 486 U.S. at 867 (addressing circumstances in which recusal is required under 28 U.S.C. § 445(b)(4)). This provision, too, requires a judge to make a judgment based on all the circumstances, and the ordinary remedy for a mistaken assessment regarding recusal is an appeal, or possibly mandamus. See Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at pp. 3-4.

Thus, here, too, the complaint does not approach the "extraordinary showing" that the judge engaged in "the type of egregious ill-motivated violation that could conceivably rise to the level of judicial misconduct" and that is "needed to convert a judicial action, here the failure to recuse, into misconduct." See Boudin, C.C.J., Order, In Re: Complaint No. 399 (Jan. 27, 2005), at p. 4; and Boudin, C.C.J., Order, In Re: Complaint No. 427 (Apr. 25, 2006), at p. 3. There is no direct allegation made, and no evidence to conclude, that the judge was improperly motivated or had some other illicit purpose for not recusing from the case, even if the judge erroneously failed to recuse pursuant to 28 U.S.C. § 455(b)(4).

The same analysis also applies to complainant's allegation that the judge engaged in misconduct by erroneously failing to recuse under Canon 3(C)(1) of the Code of

detailed, reasoned rulings throughout the matter. Nor does the purported removal of the judge's name from the organization's website indicate that the judge was improperly motivated in presiding over the case. See supra p. 3.

Conduct. See Boudin, C.C.J., Order, In Re: Complaint No. 427 (Apr. 25, 2006), at pp. 2-3 ("[A] violation of the Code of Conduct[']s provisions regarding recusal does not] necessarily constitute judicial misconduct. Conceivably a sufficiently egregious violation, especially if coupled with evidence of bad faith, might in some circumstances rise to the level of judicial misconduct[, but such a violation must be] egregious [and] ill-motivated" to constitute misconduct). See also 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 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 [28 U.S.C. § 351, et seq.] and these Rules").

Complainant's allegations that the judge violated Canons 1, 2, and 4 of the Code of Conduct by presiding over the case despite the judge's connections to the organization are nothing more than objections to the judge's decision not to recuse sua sponte. Thus, for the reasons already explained, these allegations are also not cognizable. See supra notes 4, 10, and 12; Rules of Judicial-Conduct, Rule 4(b)(1), and Commentary on Rule 4; and Code of Conduct, Canon 1 Commentary.

To the extent complainant alleges that the judge engaged in misconduct in issuing the temporary restraining order and the preliminary injunction and any orders regarding enforcement of the restraining order or the injunction, these allegations are not

cognizable as an improper motive is not supported by the record. See supra Rules of Judicial-Conduct, Rule 4(b)(1). Rather, the record indicates that, in issuing each of these rulings, the judge considered the filings of both parties and issued reasoned decisions, and held, prior to issuing the temporary restraining order and the preliminary injunction, hearings at which both sides presented their arguments and were questioned by the court. Accordingly, the complaint in this respect is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B).

There remains to address complainant's allegations that the judge engaged in misconduct by breaching fiduciary duties to the organization as a member of its board. These allegations provide no basis for further inquiry.

While it is conceivable that a judge's violation of his or her fiduciary duty outside of the judge's performance of official duties could be sufficiently egregious to amount to misconduct under the statute, not every such breach would amount to "conduct that is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people." See Rules of Judicial-Conduct, Rule 4(a)(7) (defining cognizable misconduct outside the performance of official duties); and Judicial Council of the Fourth Circuit, Memorandum and Order, In the Matter of Judicial Complaints Under 28 U.S.C. § 351 Nos. 04-21-90039 and 04-21-90119 (July 29, 2022), at pp. 10-11 (explaining, in the context of allegations that a judge engaged in judicial misconduct outside of the performance of official duties, that "[n]ot every violation of the provisions governing judicial conduct warrants imposition of discipline under the Judicial Conduct

and Disability Act,[and that t]he need for disciplinary action, and the nature of that action 'should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system'" (quoting Code of Conduct, Canon 1 Commentary)); and see, e.g., Katzmann, C.C.J., Order, In re: Charge of Judicial Misconduct No. 12-90050-jm (2d Cir. Nov. 20, 2014), at p. 8 (finding that a judge's mistake on a federal tax form would not, even if true, cause a "reasonable person [to] view [such a mistake] as creating a 'substantial and widespread lowering of public confidence in the courts'").

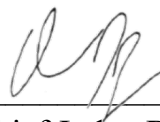
Moreover, complainant makes no direct allegations that the judge acted improperly, violated the Code of Conduct,¹³ or engaged in misconduct in carrying out fiduciary duties to the non-profit. Complainant also does not provide any evidence that the judge did so. Rather, complainant speculates that the judge may have violated the Code of Conduct by breaching fiduciary duties as a board member and states that further investigation is necessary to determine whether such breaches and Code violations occurred. However, such speculation is insufficient to support a finding of misconduct or, therefore, to justify further inquiry. See, e.g., Katzmann, C.C.J., Order, In re Charge of Judicial Misconduct No. 12-90050-jm (2d Cir. Nov. 20, 2014), at p. 7 (declining to investigate further several allegations against a judge as they were speculative and explaining that "'Rule 6(b) [of the Rules of Judicial-Conduct] makes clear that the

¹³ See supra Rules of Judicial-Conduct, Commentary on Rule 4; and Code of Conduct, Canon 1 Commentary.

complaint must be more than a suggestion to a Chief Judge that, if he opens an investigation and the investigating body looks hard enough in a particular direction, he might uncover misconduct[, as a complaint] . . . must contain a specific allegation of misconduct supported by sufficient factual detail to render the allegation credible" (quoting In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 591 F.3d 638, 646 (U.S. Jud. Conf. Oct. 26, 2009)); and Lucero, C.J., Order, In Re: Charge of Judicial Misconduct Nos. 10-10-90029 -- 10-10-90034 (10th Cir. Nov. 16, 2010), at pp. 3-4 ("[S]peculative [allegations] . . . may be dismissed because they are not supported by factual allegations which would give rise to an inference of misconduct The [Rules of Judicial-Conduct] require complainants to support their allegations with 'sufficient evidence to raise an inference that misconduct has occurred.' . . . Conjecture . . . does not comprise sufficient evidence." (internal citations omitted)). Accordingly, the complaint in this respect is dismissed as "lacking sufficient evidence to raise an inference that misconduct has occurred." See Rules of Judicial-Conduct, Rule 11(c)(1)(D), and 28 U.S.C. § 352(b)(1)(A)(iii).

For the reasons stated, Complaint No. 01-25-90028 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).

July 10, 2025
Date



Chief Judge Barron