

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-17-90011, 01-17-90012, 01-17-90013, 01-17-90014, 01-17-90015,
01-17-90016, 01-17-90017, and 01-17-90018

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 7, 2018

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against five judges of the U.S. Court of Appeals for the First Circuit, and three district judges in the First Circuit. Complainant alleges judicial misconduct in connection with his previous misconduct complaint and civil appeal. The misconduct complaint is baseless and not cognizable.¹

Complainant alleges that the circuit judge who dismissed complainant's previous misconduct complaint was biased, and that the members of the presiding Judicial Council panel (two of the subject circuit judges and the three subject district judges) wrongfully

¹ The Judicial Council has authorized me, as Chief Circuit Judge, to dispose of the present matter on the merits "in the interest of sound judicial administration." See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 25(f) ("If all circuit judges in regular active service are disqualified, the judicial council may determine whether . . . in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.").

affirmed the order of dismissal in order to protect the subject judge and to further a conspiracy to harm complainant. Complainant further alleges that these judges should have recused from review of his previous misconduct matter.

Complainant also suggests that the subject circuit judges mishandled and should have recused from complainant's appeal of the civil case underlying his previous misconduct complaint. Complainant asserts that all the subject judges violated various civil and criminal statutes, engaged in unnecessary judicial delay, and failed to execute judicial obligations, including, but not limited to, appointing counsel to represent complainant. Complainant requests recusal of the subject appellate judges from his appeal, transfer of the case to another circuit, and a transcribed hearing for review by Congress.

As an initial matter, the judicial misconduct procedure does not provide an avenue for affording petitioner's requested relief, including the recusal of a judge, the reassignment of a case, or a hearing. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

The reviewed record, including the instant and previous misconduct complaints, the orders issued in connection with the previous misconduct complaint, and the record of the underlying litigation, offers no indication that any of the subject judges were biased or otherwise engaged in judicial misconduct. The reviewed record indicates that complainant was dissatisfied with orders issued in the civil case that was the subject of

the previous misconduct complaint, including orders denying motions for the judge's recusal and for appointment of counsel, as well as the order dismissing the case.

The record further indicates that complainant appealed and filed a motion for appointment of counsel in his appeal, which the court denied. Complainant filed two motions requesting that the subject circuit judges recuse from his appeal on the ground that each judge had issued prior unfavorable rulings against complainant. The court denied the motions as frivolous and explained that judicial rulings are not a basis for recusal. The court granted appellees' motions for summary disposition and affirmed the judgment of the district court.

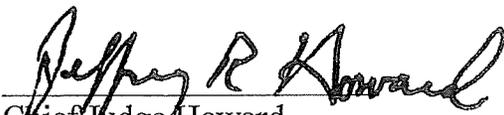
Complainant provides, and the record reveals, no evidence to support the assertion that the subject appellate judges harbored an improper motive in issuing any orders in complainant's civil appeal. Further, complainant provides no information to suggest that the circuit judge who dismissed complainant's previous misconduct complaint or any of the members of the Judicial Council panel assigned to review the order dismissing the previous misconduct complaint were biased or failed to adequately review the allegations of judicial wrongdoing. Complainant likewise offers no support for his conclusory allegations that any of the subject judges violated any laws or engaged in other wrongdoing. 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).

Where, as here, there is no evidence of improper judicial motive, complainant's allegations amount to nothing more than an attempt to misuse the misconduct complaint

process to challenge the substance of orders with which complainant disagrees, including those dismissing the previous misconduct complaint and the court's orders issued in complainant's appeal (including the denial of the motions to recuse). See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."); and id. Commentary on Rule 3 ("Any allegation [challenging a] . . . determination to dismiss a prior misconduct complaint[, without more, is] properly dismissed as merits-related . . ."). The same is true for complainant's allegations of judicial delay. See Rules of Judicial-Conduct, Rule 3(h)(3)(B) ("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."). Accordingly, the complaint is dismissed as directly related to the merits, 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. 01-17-90011, 01-17-90012, 01-17-90013, 01-17-90014, 01-17-90015, 01-17-90016, 01-17-90017, and 01-17-90018 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

2/7/2018
Date


Chief Judge Howard