

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90021

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 a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with a civil case over which the judge presided.¹ The misconduct complaint is baseless and not cognizable.

Complainant alleges that the judge acted with bad faith by denying complainant's request to vacate the court's orders in a previous civil case and dismissing complainant's subsequent proceeding.² Complainant further alleges that the judge is biased against him as a pro se litigant and that, in an effort to disadvantage him, the judge wrongfully denied complainant's requests for appointment of counsel and to file electronically.

¹ This is complainant's third misconduct complaint.

² Complainant's first civil case was the subject of his first judicial misconduct proceeding. *See nte. 1, supra.*

Complainant adds that the judge violated various civil and criminal statutes and engaged in unnecessary judicial delay.

Complainant requests that the judge's order dismissing the case be voided, that the judge recuse from the proceeding, and that the case be transferred to another district. Complainant seeks additional relief, including, but not limited to, appointment of counsel, an award of attorney's fees, and a transcribed hearing.

As an initial matter, the misconduct complaint procedure does not provide a mechanism for obtaining an order in a pending or closed case, or for petitioner's other requested relief, including the recusal of a judge, the transfer of a case, a hearing, appointment of counsel, or a monetary award. 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.

Moreover, complainant's allegations are wholly unsupported. According to the reviewed record, along with the civil complaint, complainant filed motions to file electronically (via ECF), for appointment of counsel, to proceed in forma pauperis (IFP), and to void all orders issued in his previous civil case. The reviewed record further indicates that the judge denied without prejudice complainant's motions to file via ECF, for appointment of counsel, and to proceed IFP. The court further directed complainant to refile his motion to proceed IFP with the required affidavit and to show cause why his complaint should not be dismissed for lack of subject matter jurisdiction and for failure to state a claim. Thereafter, the judge allowed complainant's renewed motion to proceed

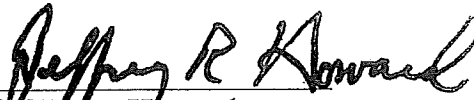
IFP, determined that complainant's show cause response failed to demonstrate why the case should not be dismissed, denied the motion to void the court's orders in the previous case, and dismissed the proceeding.

There is no evidence to support complainant's conclusory allegations that the judge acted in bad faith, was biased, or engaged in other wrongdoing in presiding over complainant's civil case. Accordingly, 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).

As there is no evidence of improper judicial motive, complainant's objections to the judge's orders (including the denial of complainant's motions to void the court's orders in the prior proceeding and to appoint counsel and the dismissal of the case), as well as the claim of delay, are not cognizable. 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 . . . , without more, is merits-related."); and 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 No. 01-17-90021 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

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90021

BEFORE
Howard, Torruella, Thompson, Kayatta and Barron, Circuit Judges
Hillman and Delgado-Hernández, District Judges

SHOW CAUSE ORDER

ENTERED: FEBRUARY 7, 2018

You have now filed three judicial misconduct complaints, each of which has been found to be patently without merit. These complaints are No. 01-16-90033; Nos. 01-17-90011 -- 01-17-90018¹; and No. 01-17-90021.

Pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), you are directed to show cause why an order should not be entered by the Judicial Council precluding you from filing any new judicial misconduct complaints without prior permission of the Judicial Council. If you oppose such an order, you must file a written opposition with the Office of the Circuit Executive,

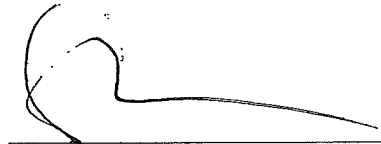
¹ Complaint Nos. 01-17-90011 -- 01-17-90018 was filed against eight (8) judges. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 8(a); and *id.* Commentary on Rule 8 (Recommending providing "separate docket numbers for each subject judge.").

John Joseph Moakley United States Courthouse, 1 Courthouse Way, Suite 3700, Boston, Massachusetts 02210, which must be received within 42 days of the date of this order.

Until this show cause proceeding is resolved, any new judicial misconduct complaint that you file will be held in abeyance. If an order of preclusion is entered, any such new complaint will be returned to you without prejudice to your right to resubmit it after obtaining prior permission from the Judicial Council. This order does not affect your rights under the Rules of Judicial-Conduct in the pending matter.

2/7/2018

Date

A handwritten signature in black ink, appearing to read "Susan Goldberg", written over a horizontal line.

Susan Goldberg, Secretary