

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90013

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JULY 19, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge in the First Circuit engaged in misconduct while presiding over the complainant's civil proceeding against a state court judge, and others.

The complainant alleges that the judge used the judicial "office to obtain special treatment for friends or relatives," in violation of Rule 3(h)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct). The complainant next alleges that the judge prematurely ruled on the case, dismissing it only a day after it had been referred to the judge and the state judicial defendant had filed a responsive pleading. The complainant states that the judge, therefore, had insufficient time in which to review the complainant's substantial pleadings. The complainant

concludes that the judge's dismissal of the case constituted obstruction of justice in violation of federal law.

The complainant next alleges that, in the memorandum and order dismissing the case, the judge materially misstated an allegation contained in the complainant's amended complaint. The complainant surmises that the judge intentionally misrepresented this allegation in order to provide the state judge with a false alibi and justify the court's dismissal of the case. The complainant concludes that this wrongdoing constitutes obstruction of justice, fraud and other federal crimes.

Finally, the complainant alleges that the judge's docket clerk engaged in wrongdoing because that person worked on the case when, complainant alleges, the person was related to an employee (with the same last name) of a corporate defendant in the case.

The complaint is baseless and will be dismissed. We start with the assertion about the docket clerk. The judicial misconduct complaint procedure does not provide an avenue for asserting claims of impropriety by court staff. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rule 4. In any event, the factual assertion is wrong. The identified individual, who allegedly supervised the complainant while she was employed by the defendant corporation, is not related to the judge's clerk.

With respect to the allegations against the judge, there is no information in the misconduct complaint or in the in reviewed record - including the docket, pleadings and court orders - indicating that the judge provided preferential treatment to the state judge

defendant, neglected adequately to review the complainant's submissions, or engaged in other wrongdoing. The complainant correctly states that the court issued a memorandum and order dismissing the case the day after the matter had been reassigned to the judge and the day after the state judge had filed a motion to dismiss. The court stated that it was dismissing the case because the complainant "fail[ed] to allege 'a plausible entitlement to relief'" and gave its reason. As to the alleged misstatement, the distinction between the allegation, as phrased in the amended complaint and as reiterated by the court, is neither material nor relevant to the grounds for the court's dismissal of the case. On its face, the order shows that the judge did review complainant's filing. This ruling was not intended to give the state judge "special treatment," or reflective of any other illicit judicial motivation, and the judge reviewed the complainant's pleadings before issuing the order. If complainant disagreed with the order, her recourse was to appeal. Accordingly, these allegations are dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Independently, the claim also fails for an additional reason. A claim that a judge committed error in a ruling does not itself provide a basis for a cognizable misconduct complaint. See Rules of Judicial-Conduct, Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related."). Even if there had been a substantive discrepancy between the amended complaint and the court's reiteration of the allegation, which there was not, there is no evidence of improper motive that would support a claim of misconduct. Accordingly, the

claim that the judge misstated the complainant's allegation in order to undermine the success of the complainant's litigation is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

For the reasons stated, Complaint No. 01-11-90013 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, Rules 11(c)(1)(B) and 11(c)(1)(C).

7/19/11

Date

Andrea L. Lynch

Chief Judge Lynch