

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90005

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: JUNE 10, 2016

Complainant, a defendant in a civil case, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge exhibited bias and hostility, and committed other transgressions in presiding over a civil proceeding filed against complainant by his former employer. The misconduct complaint is unsupported and not cognizable.

Complainant alleges that the judge is biased in favor of corporate litigants and that he treated complainant and his counsel in a "demonstrably egregious and hostile manner" during the course of the litigation. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(1)(D). Complainant describes the case filed against him by his former employer concerning the alleged retention and disclosure of the company's confidential information as a "vexatious counter lawsuit" initiated in retaliation for complainant's successful state court proceeding against the company arising from complainant's sudden and unlawful termination. Complainant

asserts that any documents he retained were both necessary for his subsequent job search and consistent with the confidentiality agreement he had signed with his employer.

In support of his claims of judicial bias and hostility, complainant contends that the judge did not listen to complainant and his counsel or read any of their filings. Complainant alleges that a preliminary injunction that the court issued effectively "criminalized [complainant's] job search[] and poisoned the well for any future potential job searches." Complainant further asserts that the judge improperly relied on a letter proffered by the plaintiff as a "verbatim docket of scheduled court proceedings." Complainant adds that the judge wrongfully held complainant in contempt and imposed a substantial "fine" when, in accordance with the injunction, he voluntarily turned over information that had just surfaced.

Complainant continues that he and his attorneys received short notice of a mediation that the court had scheduled, that complainant's attorneys "quit in outright fear of reprisals from [the judge]," and that the judge supported the "extortion request" that complainant ultimately decided to accept, on the advice of replacement counsel. Finally, complainant concludes that the judge exercised "bald arrogance," essentially sanctioning the "premeditated perjury" of a key witness, that the court's orders reflected the judge's "prepackaged malice," and that "[a] total absence of due process took place."

The complainant's allegations find no support in the reviewed record of the proceeding. The case, pending before the judge for under a year before settling, was heavily litigated, with multiple sanctions motions and discovery disputes. Over the

course of proceeding, the judge held multiple hearings and issued numerous orders that reflect the court's close attention to the case and to the parties' differing positions.

Much of the controversy concerned complainant's objection to and subsequent compliance with the preliminary injunction that the judge issued after a hearing. After repeatedly warning complainant to comply meticulously with the terms of the preliminary injunction, the court found complainant in contempt when, during the course of discovery, he belatedly identified additional individuals to whom he should have sent the court's injunction. As a result, the judge ordered the forfeiture of a substantial bond that complainant had posted.

A number of the court's rulings were in complainant's favor, and none offer any indication of bias or hostility. Over plaintiff's objection, the judge ruled that complainant's letter to prospective employers was consistent with the court's order and not confusing; the judge allowed complainant's request to retain a neutral expert, as required by the injunction, in the state to which complainant had moved; and the court allowed complainant's multiple motions for extensions of time, denied the plaintiff's request for fees, and allowed complainant's request to use the bond which he had forfeited to compensate the expert. Nothing in the lengthy record corroborates complainant's conclusory claims of judicial bias, hostility or inattention.

The court's numerous hearings and multiple extensions of time, authorized at both parties' request, likewise repudiate complainant's claims that the judge somehow denied complainant due process or adhered to an unreasonable or improper schedule. Nor are there any facts in the complaint or the reviewed record substantiating the assertions that

the judge endorsed perjured testimony or coerced complainant to accept the settlement agreement.

With respect to the scheduled mediation, the docket demonstrates that the parties were notified over five (5) months before it was to take place. Further, in a joint status report submitted to the court several months later, the parties explicitly noted that they requested no change to the scheduled mediation. Accordingly, complainant's assertion that the judge denied complainant and his counsel adequate notice of the scheduled mediation is belied by the record.

Finally, counsel's reason for withdrawing is not apparent from either the complaint or the record of the case. Regardless, counsel's withdrawal is not evidence of judicial misconduct.

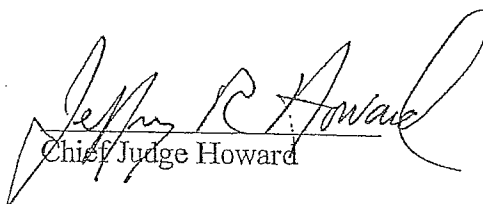
As there is no evidence in support of the allegations of judicial wrongdoing, the misconduct complaint is dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Complainant objects to a number of orders issued in the case, including, but not limited to, the preliminary injunction and the order finding complainant in contempt and mandating forfeiture of the posted bond. But neither of these orders, nor any other available information, suggest that the judge harbored any "malice" or was otherwise illicitly motivated. Where, as here, there is no evidence of judicial animus, complainant's objections to the substance of the court's rulings 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."). 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. 01-16-90005 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)(D), respectively.

6.10.16
Date


Chief Judge Howard