

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90005, 01-19-90011, 01-19-90012, 01-19-90013, 01-19-90014,
01-19-90015, 01-19-90016, AND 01-19-90017

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 16, 2019

Complainant, an incarcerated pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against four district judges and three magistrate judges in the First Circuit. Complainant alleges judicial misconduct in connection with two habeas corpus and five civil right cases over which the subject judges have presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.

Complainant asserts that the judges have conspired to protect respondents/defendants in complainant's cases by refusing to consolidate his cases, tampering with his filings, issuing rulings against him that "misconstrue and discredit" his filings, and "maliciously and summarily dismiss[ing his] cases." Complainant alleges that, by failing to consolidate his cases, the judges are making it "impossible" for him to

manage his cases and are "abus[ing]" a federal statute in retaliation against complainant and in order to assess duplicative filing fees.

Complainant alleges that three of the district judges and two of the magistrate judges have "maliciously and summarily" denied his motions for counsel, and that one of the district judges erroneously denied complainant's motion to file additional complaints and failed to send him the order of dismissal issued in one of his civil rights cases.¹ Complainant additionally alleges that the court has delayed in ruling on a motion to reconsider and a notice of appeal that complainant filed in one of his habeas proceedings, as well as on his requests for injunctive relief that he filed in unspecified matters.

Complainant requests various relief, including, but not limited to: "suspension" of one of the district judges from judicial duties; an investigation by the Congressional Judiciary Committees to sanction and remove the same judge from the judiciary, and to amend the federal statute that the court is purportedly using in retaliation against complainant; consolidation of complainant's cases; appointment of counsel for complainant; return of complainant's filing fees; and reassignment of his cases to another judge.

As an initial matter, the judicial misconduct complaint process does not provide for much of the relief complainant requests. See 28 U.S.C. § 351, et seq., and Rules for

¹ Complainant makes numerous allegations against court staff, including, but not limited to, "malicious[]" failure to consolidate his cases and to mail him various documents. The judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20(b). Further, none of the requested relief is available, where, as here, complainant's allegations are not substantiated by the record and are not cognizable. See id.

The reviewed record, including the misconduct complaint, the dockets of the proceedings, and the courts' orders, provides no support for complainant's conclusory allegations of conspiracy, delay, or other wrongdoing by the judges. The record indicates that complainant filed a petition for writ of habeas corpus against, among others, the prison at which he is incarcerated and its warden and a motion for injunctive relief (the first habeas case). A few days after it was filed, the first district judge denied without prejudice the motion for injunctive relief in a multi-page order, explaining that complainant failed to address the necessary factors. Less than a week later, the second district judge denied the petition for lack of subject matter jurisdiction in a several-page order.

The record further indicates that complainant filed a second petition for writ of habeas corpus (the second habeas case) and two civil rights cases (the first and second civil rights cases, respectively), all against the same parties. Without assessing a filing fee, the third district judge dismissed the second civil rights case as duplicative of the

first.² Complainant filed motions to consolidate the second habeas case and the civil rights cases and a motion to appoint counsel in the second habeas case.

The record shows that the first magistrate judge denied the motion to consolidate filed in the first civil rights case because habeas and civil rights cases are procedurally different. In the second habeas case, the second magistrate judge denied the motion for counsel, as complainant had not met the applicable standard. The court also denied the motion to consolidate as moot after granting respondents' motion to dismiss, explaining that a habeas action is not the appropriate mechanism to challenge the conditions of confinement. Complainant filed a motion for reconsideration and a notice of appeal of the order of dismissal. After the Court of Appeals issued an order explaining that it lacked jurisdiction while the motion for reconsideration was pending, the second magistrate judge denied the motion for reconsideration.

According to the record, complainant filed additional motions in the civil rights cases seeking, among other things, to file three additional cases, to consolidate his cases, and for appointment of counsel. The court denied these motions, explaining that some of the cases which complainant sought to consolidate were closed, consolidation was otherwise inappropriate, and complainant does not need permission to file cases.

The record also shows that complainant filed three additional civil rights cases. Complainant sought to consolidate these cases with each other, as well as with his

² Despite complainant's contention to the contrary, the docket indicates that the court mailed this dismissal order to complainant.

previous cases, and to have his cases reassigned to another judge, all of which the court denied. The court granted complainant's motions for additional time to pay filings fees and to proceed in forma pauperis in each of these civil rights cases.

Complainant provides, and the record reveals, no information to support the allegation that any of the subject judges conspired against complainant -- by not consolidating his cases, misconstruing his filings, wrongly dismissing his cases, assessing duplicative filing fees, or otherwise. Contrary to complainant's allegations, the reviewed record demonstrates that the judges considered complainant's numerous pleadings, issued reasoned rulings, and did not impose excessive or duplicative filing fees. See supra, pp. 3-5. 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).

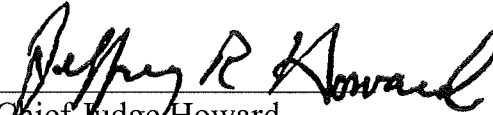
As there is no evidence of judicial animus or other improper motive, complainant's objections to the courts' orders, including, but not limited to, the orders of dismissal and the denials of his motions to consolidate and for appointment of counsel, are not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."). The same is true for complainant's allegations of delay. See id. ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive. . . ."). Accordingly, the complaint is dismissed

pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Finally, contrary to complainant's allegation, the docket indicates that the court mailed to complainant a copy of the order of dismissal in the second civil rights case. See supra, nte. 2. Further, the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge. See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at 7. Accordingly, this claim is not indicative of misconduct and is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint Nos. 01-19-90005, 01-19-90011, 01-19-90012, 01-19-90013, 01-19-90014, 01-19-90015, 01-19-90016, and 01-19-90017 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D), respectively.

September 16, 2019
Date


Chief Judge Howard