

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90002

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 24, 2020

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with five civil cases over which the judge presided. The misconduct complaint is baseless and is not cognizable.

In his protracted complaint, complainant alleges that the judge is "incompetent" and issued a series of improper decisions in complainant's cases, all filed in connection with complainant's loan and promissory note. Complainant asserts that the judge is biased against complainant, although complainant also states that the judge did not act maliciously, but merely reiterated defendants' arguments out of "carelessness."

Specifically, complainant alleges that the judge indiscriminately accepted defendants' arguments that their allegedly deceptive business practices were in fact technical mistakes and that complainant's loan document did not require defendants to act in good faith. Complainant further alleges that the judge issued decisions contrary to

precedent. Complainant avers that the judge denied complainant's request for injunctive relief based on a "fabricat[ed]" version of complainant's argument, cited "nonexistent" court rules, and improperly dismissed certain of complainant's claims as barred by res judicata. Complainant also alleges that the district judge incorrectly ruled that defendants did not have to comply with a district court local rule because complainant was pro se. Complainant adds that one of complainant's motions for reconsideration has been pending "indefinitely," inhibiting complainant's ability to appeal the decision. Finally, complainant contends that he has been denied his "day in court" as his cases were dismissed without any hearing or litigation.

Complainant requests vacatur of the district judge's rulings and reassignment of two of his cases to another judge.¹

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for vacating a judge's rulings or reassigning cases, as complainant requests. 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 misconduct complaint and attachments, the district court dockets and orders, and related state court records, provides no evidence for complainant's allegations of judicial "incompetence," bias, or other misconduct. The record reflects that defendants removed complainant's state court action (complainant's

¹ Complainant also makes allegations of wrongdoing against one of defendants' counsel. As the judicial misconduct complaint procedure applies only to federal judges, these allegations are not addressed. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1(b).

first case) against various lenders to the district court. The judge denied complainant's request to remand to state court, held a hearing on complainant's motion for reconsideration of the order denying remand, and gave complainant numerous opportunities to amend his complaint. Complainant moved for default judgment against one defendant for failure to comply with a local rule, and the court denied the motion, explaining that the rule in question was not applicable.

Defendants moved to dismiss, arguing in part that not every technical violation of the governing federal rules should expose a loan servicer to liability under state law. In a detailed order dismissing the case, the judge found, among other things, that complainant failed to establish that defendants had violated the state law in part because complainant and one defendant had not executed a written agreement memorializing their alleged oral agreement, as required under state law.

Complainant again sued various defendants in state court in connection with assignments of his loan and an attempted loan modification. Defendants removed the case (complainant's second case) to federal court, and complainant moved to remand. The judge dismissed this proceeding for failure to state a claim, for lack of standing, and for failure to complete service.

Complainant subsequently sued many of the same defendants, this time in federal court, for improper debt collection practices, among other things (the third case). In two lengthy orders, the judge granted most of defendants' motions to dismiss, finding that the "good faith" provision in the loan document had not been violated. After holding a

hearing and ordering further briefing on one count against one defendant, the judge dismissed the claim, explaining that defendant's offer of a loan modification was not prohibited by the applicable consumer protection law.

Approximately two years later, defendant lenders removed to federal court another state case (the fourth case), in which complainant asserted, in part, that, pursuant to state court precedent, there had been invalid assignments of his loan. Complainant moved to remand and sought a preliminary injunction enjoining a scheduled foreclosure, arguing that an agent of a servicer, rather than a "lender," had improperly delivered the notice of foreclosure, that the district court had invalidated a foreclosure under similar circumstances in another case, and that state court precedent required an evidentiary hearing on the matter. Defendants moved to dismiss. After a hearing, the judge denied complainant's requests for remand and denied the request for a preliminary injunction, finding that complainant failed to show a reasonable likelihood of success on the merits because the facts of his case were distinguishable from the federal case on which he relied and because he failed to provide support for his assertion that a lender cannot act through its agents, where, as here, the lender was clearly identified.²

The next year, the judge consolidated the fourth case with another of complainant's cases (the fifth case), filed approximately two weeks after the fourth case and against the same defendants. After a hearing, at which all parties presented

² While the record suggests a possible misunderstanding between the court and complainant on the issue of which specific entity was entitled to serve the foreclosure notice, given the multiple grounds for the court's order denying the injunctive relief, any such misunderstanding in this regard would be immaterial to both the court's order and to the resolution of the pending matter.

arguments regarding defendants' motions to dismiss, the judge dismissed the consolidated cases in a lengthy order, finding certain of complainant's claims -- which had been or could have been raised in the three prior actions against defendants' predecessors-in-interest -- barred by res judicata, and rejecting other claims for reasons including those in the order denying complainant's request for a preliminary injunction.³

Complainant's allegations that the judge exhibited bias or incompetence, or engaged in any other wrongdoing in presiding over his cases, are wholly unsubstantiated by the record. To the contrary, the judge's numerous detailed and reasoned orders, issued over a number of years in complainant's multiple proceedings, demonstrate that the judge carefully considered complainant's lengthy pleadings, liberally construed the pro se complainant's claims, and cited to applicable caselaw and procedural rules.

Likewise, contrary to complainant's allegation that the judge denied him access to court or dismissed his proceedings without any hearing or any litigation, the record shows that the judge held multiple hearings, at which complainant appeared and presented his arguments, and repeatedly allowed complainant to amend his pleadings throughout the litigation. As complainant's allegations are unsubstantiated by the record, the misconduct 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).

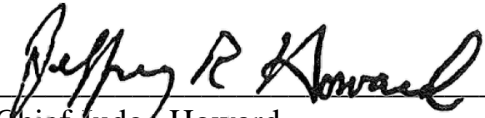
Where, as here, there is no evidence of illicit judicial motivation, complainant's objections to the courts' rulings -- including those that allegedly indiscriminately accepted

³ The judge denied complainant's motion for reconsideration of the order of dismissal.

defendants' arguments, were contrary to established precedent, improperly relied on the principle of res judicata, or were based on "fabricated" or misinterpreted rules⁴ or facts⁵ -- are not cognizable. These claims amount to nothing more than a challenge to the substance of orders with which complainant disagrees. See Rules of Judicial-Conduct, Rules 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 allegation that the judge delayed in ruling on his motion for reconsideration. See id. Rule 4(b)(2) ("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).

For the reasons stated, Complaint No. 01-20-90002 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).

November 24, 2020
Date


Chief Judge Howard

⁴ Though not necessary for the dismissal of the misconduct complaint, the judge correctly explained that the local rule at issue did not apply to pro se litigants.

⁵ See supra note 2; see also Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90016, April 16, 2014, at p. 5 (alleged minor set of errors did no more than call into question correctness of judge's ruling and did not constitute cognizable misconduct).