

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90009

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 1, 2021

Complainant, a former criminal defendant, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit in connection with complainant's criminal case over which the judge presided. The misconduct complaint is baseless, is not cognizable, and is not indicative of misconduct.

Complainant alleges that, without adequate reasoning, the judge granted his court-appointed attorney's motion for a competency evaluation. He also alleges that the judge initially failed to address many of his pro se motions, and then, without adequate reasoning, held in abeyance his pro se motion to suppress and denied his other pro se motions, including, but not limited to, his motions for a bail hearing, for probable cause and discovery hearings, for new counsel, requesting docket sheets, and for reconsideration of the court's orders.

Complainant seems to allege that, during his competency hearing, the judge violated his "Fifth and Sixth Amendment right to cross-examination[,]" by "refus[ing] to let [him] speak much . . . [or] object much to witnesses against [him]," and concluded without evidence that complainant had admitted certain facts evidencing his culpability. Complainant additionally appears to allege that the judge was not authorized to rule on his competency and related matters, and that, as a result, he was "unable to obtain relief." Finally, complainant asserts that he did not receive court orders, as well as documents he requested from Clerk's Office staff.¹

The reviewed record, including the misconduct complaint, the case docket, relevant transcripts, and court orders, is devoid of any information suggesting that the judge engaged in misconduct in presiding over complainant's case. The record indicates that, after complainant was charged, complainant's court-appointed attorney filed a motion for a custodial competency evaluation of complainant. At a hearing on the motion, the attorney explained the basis for the motion, and complainant spoke at length, arguing against a competency evaluation. After complainant refused the judge's offer to speak with a psychologist, the judge agreed to review additional evidence of competency submitted by complainant, took the matter under advisement, and subsequently granted the motion.

¹ Complainant includes apparent allegations against the Federal Public Defender and prison staff which are not addressed, as the judicial misconduct complaint process only provides an avenue for asserting claims against federal judges. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 1(b).

Prior to his competency hearing, complainant filed numerous pro se pleadings, including, but not limited to, motions for a bail hearing, to compel discovery, to suppress, seeking withdrawal of counsel, to proceed pro se, for copies of court orders and documents from the record, and a motion seeking the judge's recusal. In a multiple-page written order, the judge denied complainant's pro se request for bail, explaining that complainant posed a danger and a flight risk, and provided a statement explaining that the court ordered the custodial competency evaluation because complainant's attorney requested the evaluation, complainant did not appear to be coherent when he appeared in court, and his evidence in support of his competency was "incomprehensible." The judge separately denied complainant's pro se motion for recusal, explaining that under the Code of Conduct for United States Judges there was no conflict or appearance of conflict.

Complainant filed multiple pro se pleadings, including but not limited to, requesting reconsideration of the orders denying bail, requiring a custodial competency evaluation, and denying the motion to recuse, as well as requesting that his counsel withdraw from the case, and seeking to compel discovery. The judge held in abeyance complainant's previously filed motion to suppress and denied the remainder of the motions.

At complainant's competency hearing, the judge engaged in an extended colloquy with complainant during which the judge explained that the hearing was intended to determine competency not culpability and explained the basis for complainant's arrest. Complainant argued extensively that he was competent to stand trial and cross-examined

the court-appointed psychologist, who had testified to the contrary. Complainant's attorney argued that complainant should be found incompetent and that the case should be dismissed. After allowing complainant to argue again that he was competent to stand trial, the judge declared complainant incompetent and agreed that the case should be dismissed. Thereafter, the court entered a multiple-page order dismissing the case and releasing complainant.

The misconduct complaint is without merit. There is no evidence that the judge failed to hear and to adjudicate adequately complainant's case, including complainant's pro se motions, or violated complainant's constitutional rights during his competency hearing. To the contrary, the judge allowed complainant to testify extensively at his initial and competency hearings, considered complainant's additional evidence in support of his competency, allowed complainant to cross-examine the key witness, issued multiple-page orders providing clear grounds for denying bail, ordering a custodial competency evaluation, and finding complainant incompetent, and addressed numerous of complainant's pro se motions, before dismissing the case. See supra pp. 2-4. Nor does the record support the claim that the judge concluded that complainant had admitted certain facts evidencing his culpability. Rather, at complainant's hearing, the judge made it clear that complainant's culpability was not at issue. See supra p. 3. Therefore, the complaint is dismissed as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

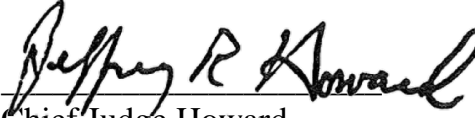
Where, as here, there is no claim or evidence of bias or improper judicial motivation, complainant's challenges to the court's authority for its competency rulings, or to the substance of or reasoning for the court's orders (including the order for a custodial competency evaluation, the order denying bail, the orders adjudicating complainant's pro se motions, and the competency order) 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."); id. Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related.").

Insofar as complainant alleges that the judge improperly delayed or failed to address ruling on his pro se motions, the complaint is not cognizable. See Rules of Judicial-Conduct, 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 in delaying a particular decision . . ."), and Rules of Judicial-Conduct, Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, *i.e.* assigning a low priority to deciding the particular [matter]."). Therefore, 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, complainant's claim that he did not receive court orders and requested documents from Clerk's Office staff is not indicative of misconduct, as the conduct of court staff in exercising their administrative duties is not attributable to the judge.² See Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7 (also explaining that 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 of Judicial-Conduct). Therefore, the complaint is dismissed as not indicative of misconduct, 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 above, the misconduct complaint 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.

February 1, 2021
Date


Chief Judge Howard

² Although not necessary to the disposition of the issue, the docket indicates that complainant's counsel received copies of all orders issued in the case.