

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90010

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 25, 2021

Complainant, a respondent in a civil commitment proceeding, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit in connection with the matter over which the judge presides. The misconduct complaint is baseless and is not cognizable.¹

Repeating claims from a previous misconduct complaint, see supra note 1, complainant alleges that the judge abused the "oath of office," used "force," and violated complainant's constitutional rights when the judge, unlawfully and without jurisdiction, ordered complainant civilly committed for dangerousness. Complainant also alleges that the judge detained him unlawfully when the judge improperly converted a discharge

¹ This is complainant's second misconduct complaint. In 2016, complainant filed a misconduct complaint against the same judge that is the subject of the present matter and against a second judge, including many of the same claims made here. See Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007. The misconduct complaint was dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, July 18, 2016, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, August 1, 2017.

hearing to a hearing on pending motions and unlawfully tried to commit complainant to state custody. Complainant further asserts that the judge improperly tried to appoint a guardian ad litem for complainant when he already had court appointed counsel, and abused the judge's authority by trying to subject complainant to an unnecessary psychological evaluation in order to "injure" him through forced medications. Finally, complainant alleges that the judge conspired with another judge to confine him and that he has been detained beyond the applicable maximum sentence.

Complainant requests that the judge be removed from his case, that his court appointed attorney be removed, that complainant be released from custody, that his misconduct complaint be transferred to another circuit, and that a special committee be appointed to investigate the complaint.²

As a preliminary matter, the judicial misconduct process does not provide an avenue for obtaining relief in a case, including the removal of a judge, the removal of appointed counsel, or a complainant's release from custody. 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. Furthermore, no "exceptional circumstances" exist that would warrant transfer of the complaint to another circuit. See Rules of Judicial-Conduct,

² Complainant includes an apparent allegation against his court appointed attorney, which is 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). Further, complainant cites a variety of provisions within the Code of Conduct for United States Judges, but neither alleges nor offers any information indicating that the judge failed to comply with the referenced provisions. As explained, infra pp. 3-7, the record in the present matter offers no indication that the judge violated the Code of Conduct, let alone engaged in misconduct.

Rule 26 (providing that in "exceptional circumstances" a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding). Appointment of a special committee is also not warranted where, as here, the complaint, considered in the context of the record as whole, presents no basis for further investigation. See 28 U.S.C. § 351, et seq. See also Rules of Judicial-Conduct, Commentary on Rule 11 ("[D]ismissal is appropriate 'when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.' 28 U.S.C. § 352(b)(1)(B).").

There is no evidence, either in the complaint or in the reviewed record, in support of complainant's claims that the judge engaged in any wrongdoing. In response to a petition for a hearing to determine whether complainant suffered from a mental condition requiring that he be civilly committed, the judge held a multiple-day evidentiary hearing, and subsequently issued a lengthy memorandum and order concluding that the government had proven by clear and convincing evidence that complainant met the statutory dangerousness standard for civil commitment. The court recounted the procedural history of complainant's criminal proceedings and incarcerations, his personal and mental health history, his recent behavior, and the expert testimony presented at the hearing. The judge explained that the court's ruling was based on a number of factors, including complainant's clear, ongoing, recent pattern of violent and threatening behavior, the judge's personal observations of complainant in court, and complainant's scores on the risk assessment tools. Accordingly, the judge ordered complainant

committed to the custody of the Attorney General, and the submission of annual reports concerning his continued need for hospitalization.

Subsequently, complainant filed a motion for discharge, which the judge denied as premature, and a number of months later, complainant again filed a motion for discharge. The judge appointed a guardian ad litem and counsel for the guardian ad litem, and after a multiple-day hearing at which a psychologist and psychiatrist testified, the judge denied the motion in a multiple-page memorandum and order, concluding on the basis of the testimony and record, that complainant failed to demonstrate that, if released, he would no longer pose a substantial risk of bodily injury to others in the community.

Later that year and the following year, annual risk assessment panels recommended to the court that complainant remain committed. At the parties' request, the judge delayed complainant's next competency hearing and, at complainant's request, subsequently continued his release hearing. Thereafter, the judge asked the government to make a further attempt to place complainant at a state mental health hospital, per the government's obligation.

Subsequently, complainant filed a pro se writ of mandamus for his release,³ and a few weeks before his scheduled release hearing, complainant's counsel filed, at complainant's request, motions for the judge's recusal, to withdraw, and for a hearing on the motion to recuse. The judge converted the scheduled release hearing to a hearing on the pending motions, and after the hearing, denied the motions. Thereafter, the judge

³ Complainant was represented by counsel throughout the proceeding.

ordered that the matter be administratively stayed and appointed a guardian ad litem and forensic evaluator for complainant, based on a list provided by the parties. Complainant subsequently objected to the forensic evaluator appointed, and the judge ordered the parties to submit a new potential list of evaluators.

Several months later, complainant filed a motion for compassionate release, which the judge denied on the ground that complainant would be a danger to the community, but noted that the court appointed attorney and guardian ad litem were exploring whether there were any conditions of release available to the court consistent with community safety.

There is no evidence to suggest that the judge was biased or improperly motivated in presiding over complainant's civil commitment proceeding, conspired with another judge to commit complainant, wrongfully delayed his discharge hearing or tried to commit him to state custody, or sought to harm complainant by subjecting him to an unnecessary psychological evaluation. To the contrary, the judge held multiple evidentiary hearings, and, based thereon, issued lengthy, reasoned orders on complainant's civil commitment, and worked persistently with the government in an effort to find complainant a suitable place for custody. See supra pp. 3-5. Therefore, the complaint is dismissed as baseless. See 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 bias or improper judicial motive, complainant's challenges to the court's orders - including the civil commitment order, the

court's exercise of jurisdiction and conversion of the discharge hearing to a hearing on pending motions, and the orders appointing a guardian ad litem and a forensic examiner - 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 the discharge hearing, 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 id. 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).

For the reasons stated above, the misconduct complaint 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.

February 25, 2021
Date


Chief Judge Howard