

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-21-90009 and 01-21-90010

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: JUNE 16, 2022

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a), against two district judges in the First Circuit.¹ Complainant alleges judicial misconduct in connection with a criminal case, over which the first judge presided, and two unrelated habeas corpus proceedings, over which the second judge presided. The misconduct complaint is baseless and is not cognizable.²

Complainant alleges that both judges have engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts." Complainant

¹ Complainant appears to also make allegations against a number of First Circuit Court of Appeals judges, whom he refers to as "the unknown jurists of reason and three-judge panels of the first judicial circuit," and a retired judge of the First Circuit. As complainant did not identify any of these judges as subjects of the complaint, and because the judicial misconduct complaint procedure applies only to current federal judges, these allegations are not addressed. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 1, 3(h), and 6.

² This is complainant's second misconduct complaint. In complainant's first misconduct complaint, he alleged that the first subject judge engaged in misconduct in presiding over the same criminal proceeding underlying the present misconduct matter. See Judicial Misconduct Complaint No. 01-11-90014. Then Chief Judge Lynch dismissed the misconduct complaint, 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 Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-11-90014 (August 4, 2011); and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-11-90014 (November 17, 2011).

contends that the judges have: (1) "asserted their activism and power to become a party" to his cases; (2) used the judicial office to provide "special treatment" for themselves and their "friends," including an interested party to complainant's criminal case, with whom the judges were professionally associated; (3) treated complainant, a pro se litigant, in an "osten[ta]tious, demonstrably egre[g]ious, hostile, and contemptuous manner;" and (4) "intentional[ly] discriminat[ed] [against complainant] on the basis of race, color, sex, gender, like-national origin, and legal disability." Complainant further alleges that the judges had "an improper motive in delaying a particular decision and [exhibited a] habitual delay in a significant number of non-consolidated cases." Complainant asserts that the judges did "not allow[]" him a jury trial at which he could cross-examine the eyewitness or to admit evidence of his innocence on the record.

Specifically, with respect to the first judge, complainant alleges that the judge failed to rule on his pro se motion to show cause and for a certificate of appealability, "branded" him as "mentally ill" without any evidence at a hearing, and did not allow complainant to present evidence regarding his mental health.

With respect to the second judge, complainant specifically objects to the judge's order, allegedly issued after a lengthy period of inactivity in the case, providing that complainant's pro se motion that his habeas case proceed would be decided in the normal course. Complainant further asserts that the second subject judge denied complainant's 28 U.S.C. § 2255 motions in order to prevent complainant from presenting exculpatory evidence.

Complainant requests that his complaint be transferred to another circuit.

As an initial matter, the judicial misconduct complaint process does not provide for a transfer to another circuit where, as here, no "exceptional circumstances" exist warranting a transfer. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 26 (providing that in "exceptional circumstances" a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding), and Commentary on Rule 26 (explaining that transfer to another judicial council "may be appropriate, for example in the case of a serious complaint where there are multiple disqualifications among the original judicial council"). Further, the record, including the misconduct complaint and the dockets of the proceedings, provides no basis for complainant's conclusory allegations of judicial misconduct.

Complainant's Criminal Proceeding - The First Judge

More than 15 years ago, complainant was charged with threatening an individual involved in complainant's previous criminal case (the first criminal case), in which complainant pled guilty. The first judge held a hearing on complainant's motion to suppress, at which complainant's attorney explained that complainant wished to testify at trial against counsel's advice, and the government requested a mental evaluation, to which complainant's counsel agreed.³ Over the next several years, there was extensive litigation concerning complainant's competency to stand trial. During this time, the judge

³ Subsequently, the judge denied the motion to suppress in a lengthy order after finding complainant incompetent to stand trial. See infra p. 4.

held several hearings and status conferences regarding complainant's competency and dangerousness, at which the government and complainant were heard and evaluating physicians testified, and the judge ordered multiple psychiatric evaluations of complainant (one of which complainant purportedly requested), including evaluations for competency to stand trial, to determine medical treatment, and for dangerousness and risk assessment. Complainant also filed a motion seeking funds for an independent psychiatric evaluation, which the judge denied after complainant neglected to correct legal deficiencies that the court had identified in the motion.

Ultimately, the judge entered a lengthy order: (1) finding that complainant was incompetent to stand trial and committing complainant, without administering involuntary medication, until his mental health condition improved sufficiently to allow the trial to proceed; and (2) ordering that complainant remain in the custody of the Attorney General for civil commitment proceedings with regular updates to be provided to the court.

Nearly a decade later, complainant filed a series of motions, including but not limited to: (1) a motion requesting an order for the government to show cause for the legitimacy of both of his criminal cases; (2) a motion requesting to stand trial; and (3) a motion requesting a certificate of appealability. The judge entered an order noting these three motions and directing the U.S. Attorney to report on the case status. The

government filed a motion to dismiss the indictment against complainant, and the judge dismissed the indictment, without prejudice.⁴

Habeas Proceedings - The Second Judge

More than five years ago, complainant filed a successive pro se motion to vacate, set aside, or correct the sentence from the first criminal case, see supra p. 3, pursuant to 28 U.S.C. § 2255.⁵ The government filed a motion to dismiss for lack of subject matter jurisdiction, as complainant had failed to obtain the required authorization from the Court of Appeals to file the successive petition. The second judge denied complainant's motion for lack of subject matter jurisdiction.⁶

A few years later, complainant filed another pro se motion pursuant to 28 U.S.C. § 2255 regarding the first criminal case. The government filed a motion to dismiss, arguing, in part, that the court lacked subject matter jurisdiction and that the motion was untimely. Complainant filed a pro se motion requesting an order for the matter to proceed and, on the same day, the judge entered an order providing that the motion would be decided in the normal course. Subsequent to the filing of this misconduct complaint, the second judge dismissed the case with prejudice for lack of jurisdiction.

⁴ The warden of the medical center where complainant was held, filed a certificate of complainant's improved mental condition and a motion requesting complainant's conditional release, and complainant was released.

⁵ Previously, complainant filed a pro se motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, to which the government objected, and the second subject judge dismissed the motion on the merits. Complainant appealed, and the Court of Appeals affirmed the district court's dismissal.

⁶ Complainant filed a notice of appeal, which the Court of Appeals denied, and construed in the alternative as a request for leave to file a second or successive petition and denied. Subsequently, complainant filed a request for a certificate of appealability of the denial of his § 2255 motion, which the Court of Appeals denied.

Analysis

Neither complainant nor the record provides any evidence to support the conclusory and generalized allegations that either judge engaged in "conduct prejudicial to the effective and expeditious administration of the business of the courts," misused their "power to become a party" or otherwise, provided "special treatment" to themselves or their "friends,"⁷ treated complainant in an "osten[tat]ious, demonstrably egre[g]ious, hostile, and contemptuous manner," or discriminated against complainant on the basis of race, sex, gender, nationality, pro se status, or for any other reason. To the contrary, the record indicates that the court considered the substance of complainant's motions and issued reasoned rulings (such as the order allowing, at complainant's purported request, continued evaluation for dangerousness and risk assessment, and the order denying complainant's successive habeas motion for lack of subject matter jurisdiction). See supra pp. 4-5. These rulings include several detailed, multipage opinions and some in complainant's favor (such as the order committing complainant, without administering involuntary medication, until his mental health condition improved). See id.

Likewise, contrary to complainant's assertion that the first judge "branded" him as mentally ill at a hearing and did not allow him to present evidence relevant to his mental health, the record shows that, following the hearing, at which the government requested

⁷ Further, the judges' professional associations with an interested party to complainant's criminal case do not, alone, indicate bias. See U.S. v. Swallers, 897 F.3d 875, 877-878 (7th Cir. 2018) (holding that a judge's professional relationship with a victim in a criminal case over which the judge presided did not, alone, "pose[] a significant risk of bias" and did not require recusal); and Clemens v. U.S. District Court for the Central District of California, 428 F.3d 1175, 1178-1180 (9th Cir. 2005) (holding that judges' professional associations with interested parties to a criminal matter did not alone provide a reasonable basis to question the judges' impartiality).

and complainant's counsel agreed to a mental evaluation, the judge ordered the evaluation, held several hearings and conferences on complainant's mental health status, heard from complainant regarding treatment, and issued several orders for re-examination, including one purportedly at complainant's request, before issuing a lengthy and detailed order finding that complainant was incompetent to stand trial. See supra pp. 3-4. Further, complainant provides, and the record includes, no support for the assertion that the second judge was improperly motivated in denying complainant's successive § 2255 motion for lack of jurisdiction. Accordingly, 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 bias or improper motive, complainant's objections to the court's rulings, including the orders regarding complainant's competency, denying complainant's § 2255 motions, denying complainant's motion for funds for a psychiatric evaluation, and regarding complainant's pro se motions for an order to show cause, to stand trial, and for a certificate of appealability, 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 . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."); see also id. Commentary on Rule 4 ("Rule 4(b)(1) . . . preserves the independence of judges in the exercise of judicial authority by ensuring that the complaint procedure is not used to

collaterally call into question the substance of a judge's decision or procedural ruling."). The same is true for complainant's allegations regarding any purported delay in his cases. 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 in delaying a particular decision or habitual delay in a significant number of unrelated cases.").⁸ Accordingly, the complaint is dismissed as not cognizable, 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 Nos. 01-21-90009 and 01-21-90010 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).

As this is complainant's second baseless judicial misconduct complaint, complainant is warned that the filing of another baseless or repetitive complaint may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints . . .").

June 16, 2022
Date



Chief Judge Barron

⁸ The record, which includes one criminal case over which the first judge presided, and two habeas proceedings that are unrelated to the instant criminal case, over which second judge presided, does not support complainant's allegation that each judge engaged in "[a] habitual delay in a significant number of [unrelated] cases." See Rules of Judicial-Conduct, Rule 4(b)(2).