

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-21-90015, 01-21-90016, and 01-21-90017

BEFORE
Barron, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 12, 2022

Complainant, a pro se litigant, has filed a complaint under 28 U.S.C. § 351(a) against two appellate judges and a magistrate judge in the First Circuit. Complainant alleges judicial misconduct in connection with three civil matters that were referred to the magistrate judge, one of which was assigned to the circuit judges on appeal.¹ The misconduct complaint is baseless and is not cognizable.

Complainant makes general allegations of improper ex parte communications in all of her cases, and contends that the judges use their "office to obtain special treatment for friends or relatives," have retaliated against her, and have "act[ed] as [a] party with the defendants" in her cases. Complainant specifically alleges that the magistrate judge is biased against her, and unlawfully dismissed two of her cases, having "failed to allow the

¹ The complaint also identifies a former appellate judge in the First Circuit, includes generalized allegations against a group of unnamed judges in the First Circuit, and includes allegations against two attorneys involved in complainant's cases. The governing statute and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) provide for the filing of complaints only against current federal judges who are named in the complaint. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rules 1, 3(h), and 6. Accordingly, any allegations against these other individuals are not addressed.

case[s] to be heard, and discovery to be obtained" due to political bias and in "defiance of [the judge's] oath." Additionally, complainant asserts that, in complainant's first case, the magistrate judge erroneously "failed to issue a default ruling," "denied every legal option [complainant] had," and "wrote false language" in the order of dismissal without holding a hearing on a motion to dismiss.

As to complainant's third case, complainant asserts that the magistrate judge "aid[ed] and abett[ed]" bank fraud and delaying the case, erroneously failed to allow for an emergency hearing, and "made multiple unlawful rulings." Complainant alleges that the magistrate judge has "weaponized" the judicial office against complainant.

Complainant alleges that the two circuit judges were "political[ly] bias[ed,]" erroneously "denied [complainant's] right to a hearing on appeal[,]" and committed "crimes upon the court" when they affirmed the magistrate judge's ruling in the first case. Complainant further suggests that, by affirming the magistrate judge's ruling, the circuit judges "fail[ed] to report, . . . disclose[, or] remedy" the magistrate judge's misconduct.

There is no evidence, either in the complaint or in the reviewed record, in support of complainant's claims that the judges engaged in any wrongdoing.

Complainant's First Case

The record indicates that complainant pro se filed a civil action against a number of companies, alleging that defendants violated her rights to use their services. Several defendants moved to dismiss the complaint for lack of subject matter jurisdiction and for

failure to state a cause of action. Complainant filed a motion for a default ruling as to several defendants, discovery requests, and a motion to file an amended complaint. In a multiple-page order, the magistrate judge denied the discovery motions without prejudice as premature, construed the motions to dismiss as motions for summary judgment, and held them in abeyance until after the resolution of other pending motions. Subsequently, the magistrate judge granted complainant's motion to file an amended complaint, denied defendants' motions to dismiss and/or for summary judgment to the extent that they were based on the assertion that the initial complaint failed to state a claim, and denied complainant's motion for a default judgment.

After complainant filed an amended complaint, the magistrate judge entered a lengthy report and recommendation, advising that the amended complaint be dismissed in its entirety for failure to state a claim upon which relief can be granted, and that the court deny as moot defendants' motions to dismiss and/or for summary judgment. Over complainant's objection, the district court adopted the report and recommendation and dismissed the first amended complaint.

Complainant appealed the judgment dismissing the case. The appeal was consolidated for the purposes of briefing and oral argument with five pending interlocutory appeals complainant had filed in the first case. After the appeals were consolidated, the Court requested complainant to advise whether she intended prior filings to serve as her opening brief or whether she would file a substitute consolidated brief. Complainant filed a brief as to the consolidated appeals, and defendants/appellees

filed their briefs. Thereafter, complainant filed additional briefing. The Court entered an order treating several of complainant's filings collectively as the brief and permitted appellees to file amended responsive briefs, which they did. The Court of Appeals summarily affirmed the judgment of the district court principally for the reasons provided in the magistrate judge's report and recommendation.

Complainant's Second Case

The record indicates that, more than a year after filing the first case, complainant pro se filed a civil action against two defendants from the first case, making similar allegations to those included in the prior proceeding. The magistrate judge allowed complainant's motion to amend her complaint and ordered the U.S. Marshal to serve the amended complaint upon defendants. Complainant filed a motion to file pleadings electronically, which the magistrate judge granted. Ultimately, after briefing and a hearing, the district court granted defendants' motion to dismiss and dismissed the case.

Complainant's Third Case

The record indicates that, more than a year after filing the second case, complainant pro se filed an action against a bank and one of its employees, alleging, inter alia, fraud. Soon after initiating the action, complainant filed a motion for an emergency hearing that sought discovery from defendants, which the magistrate judge denied without prejudice as premature.

Defendants filed a motion to dismiss for failure to state a claim, and the magistrate judge issued an order that no pretrial conference would be scheduled until after resolution of the pending motion to dismiss. Complainant then filed various motions, including two motions to seal documents and a motion for recusal of the magistrate judge and the presiding district judge for failing to issue a default ruling and to seal the record. The magistrate judge denied the motion for recusal as to the magistrate judge, granted the motions to seal, and denied the remaining pending motions. Subsequently, the district court granted defendants' motion to dismiss for failure to state a claim.

The misconduct complaint is without merit. Neither the complaint nor the record provides any facts suggesting that the judges engaged in improper ex parte communications. There is also no evidence in support of complainant's conclusory allegations that the judges retaliated against complainant, misused their office, or colluded with defendants in the cases.

Complainant's other claims against the magistrate judge are equally unsupported. There is no information in the complaint or in the record indicating that the magistrate judge was biased, interfered with complainant's rights, or engaged in any other wrongdoing in handling complainant's three cases. To the contrary, the magistrate judge's numerous and reasoned orders, issued over a number of years in complainant's multiple proceedings, demonstrate that the judge carefully considered complainant's pleadings, liberally construed her claims, and cited to applicable caselaw and procedural rules when issuing decisions. See supra pp. 2-5.

Similarly, the record provides no support for complainant's claims that the circuit judges were biased against complainant, for political or other reasons, or otherwise were improperly motivated in presiding over complainant's appeal of the first case. Rather, the record indicates that the Court permitted complainant to present fully her claims by means of a substitute consolidated brief as to her pending appeals and a subsequent pleading, before affirming the district court's order for the reasons provided in the magistrate judge's thorough report and recommendation. Therefore, the complaint is dismissed as baseless, pursuant to 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 evidence of improper judicial motivation, complainant's objections to the judges' rulings, including the magistrate judge's report and recommendation recommending dismissal of the first case, and orders denying complainant's discovery motions and motion for a default ruling, and the Court of Appeals judgment summarily affirming the district court's judgment in the first case, are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also 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.") and 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."). The same is true for complainant's allegation that the magistrate judge improperly delayed complainant's 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.").

For the reasons stated, Complaint Nos. 01-21-90015, 01-21-90016, and 01-21-90017 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).

December 12, 2022
Date



Chief Judge Barron