

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-21-90018

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 a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with a civil matter over which the district judge presided. The misconduct complaint is baseless and is not cognizable.¹

Complainant alleges that the district judge exhibited "political prejudice" against complainant and improperly dismissed complainant's civil case. Complainant contends that, in dismissing the case, the judge "ignor[ed] the facts that motivated the civil lawsuit and . . . [,]" that, because of the judge's prejudice, failed to recognize defendant's failure

¹ This is complainant's second misconduct complaint. In complainant's first misconduct complaint, he alleged that two district judges in the First Circuit engaged in misconduct while presiding over complainant's criminal case. See Judicial Misconduct Complaint Nos. 01-19-90028 and 01-19-90029. Then Chief Judge Howard dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and (iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-19-90028 and 01-19-90029 (May 4, 2020); and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-19-90028 and 01-19-90029 (April 7, 2021).

to make "public" a document that would have exonerated complainant from an underlying criminal conviction.²

Complainant further asserts that, by issuing an order to show cause that "threaten[ed] [complainant] with contempt, if he dare[d] to file any" additional lawsuits in the federal court related to his conviction, the district judge demonstrated prejudice against complainant, violated complainant's "right to appeal and . . . freedom of expression[.]" and damaged the public image of the federal court. Complainant adds that the judge's subsequent order, noting complainant's response to the show cause order and deferring a decision on sanctions, was "absurd and abusive" and "an act of judicial arrogance."

Complainant requests that the order to show cause "be revoked" and that complainant's case be reassigned to another district judge.

As an initial matter, the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including revoking an order, or for reassigning a case. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19(b), and 20(b).

The reviewed record, including the misconduct complaint, its attachments, and the docket of the proceedings, provides no basis for complainant's conclusory allegations of judicial misconduct. Complainant initiated an action, alleging that defendant criminally

² See supra note 1.

conspired to violate complainant's rights by failing to disclose a document that would have refuted allegations against him in a criminal proceeding. Defendant moved to dismiss the case, arguing, inter alia, that complainant lacked standing to file a claim under a federal criminal statute and failed to plead facts that supported a plausible entitlement to relief, and that the claim was time-barred. Complainant moved for an extension of time to file a response to defendant's motion, which the judge granted, and complainant filed a motion to amend/correct the complaint. After defendant replied, complainant filed an informative motion, in which he requested that defendant's motion to dismiss be denied. The judge entered an order noting complainant's informative motion and explaining that the court would consider the parties' positions and issue a decision on the motion.

In a multiple-page opinion and order on defendant's motion to dismiss, the judge described the events precipitating the civil case, including complainant's conviction and sentence, followed by complainant's multiple, unsuccessful appeals and post-conviction actions. After finding that the instant action constituted another attempt to relitigate the criminal case, the judge considered complainant's arguments and dismissed the case for failure to plead facts that supported a plausible entitlement to relief and as untimely. Noting complainant's numerous, repetitive, and frivolous actions following his conviction, the district judge ordered complainant to show cause as to why the court should not enjoin him from filing any further action regarding complainant's criminal conviction.

After filing a notice of appeal as to the opinion and order, complainant filed an informative motion objecting to the show cause order. The judge entered an order noting the informative motion and stating that the court would issue a decision on sanctions after the Court of Appeals rules on the appeal.

The misconduct complaint is baseless. There is nothing in the complaint or the record to support complainant's conclusory allegations that the judge "ignored" facts, was biased, or otherwise engaged in misconduct in presiding over complainant's case. Rather, the record indicates that the judge considered complainant's pleadings, allowed complainant an extension of time to respond to the motion to dismiss, and issued a reasoned, multiple-page opinion and order explaining the bases for granting defendant's motion to dismiss. See supra pp. 3-4.

Likewise, there is no support for the allegations that, in issuing the show cause or subsequent order, the judge abused the judicial office, exhibited "political prejudice" against or "threaten[ed]" complainant, violated complainant's rights, or otherwise treated him improperly, let alone damaged the court's public image. See generally Rules of Judicial-Conduct, Rule 4. Notably, in issuing the order to show cause, the judge included an extensive summary of complainant's litigation history, explaining that complainant had filed multiple post-conviction actions relitigating the criminal case before providing complainant an opportunity to demonstrate why he should not be enjoined from filing further such cases without leave of the court. Therefore, 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 improper judicial motive or other wrongdoing, complainant's allegations amount to nothing more than challenges to the substance of the court's rulings, including, but not limited to, the orders of dismissal and to show cause, and therefore, 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."); 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."). 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 No. 01-21-90018 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 . . .").

December 12, 2022
Date



Chief Judge Barron