

UNITED STATES COURTS FOR THE FIRST CIRCUIT
OFFICE OF THE CIRCUIT EXECUTIVE
JOHN JOSEPH MOAKLEY UNITED STATES COURTHOUSE
1 COURTHOUSE WAY - SUITE 3700
BOSTON, MA 02210

SUSAN J. GOLDBERG
CIRCUIT EXECUTIVE
617-748-9614

FLORENCE PAGANO
DEPUTY CIRCUIT EXECUTIVE
617-748-9376

December 5, 2017

Walter Tuvell
836 Main Street
Reading, MA 01867

Re: Complaint No. 01-17-90005

Dear Mr. Tuvell:

I have enclosed a copy of Chief Judge Howard's order dismissing your misconduct complaint. Pursuant to Rule 11(g)(3) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), you have the right to petition the Judicial Council for review of the enclosed disposition. You have forty-two (42) days from the date of the Chief Judge's order to file a petition for review. See Rules of Judicial-Conduct, Rule 18(b).

Sincerely,

A handwritten signature in black ink, appearing to read "James Nagelberg".

James Nagelberg
Administrative Attorney

Enclosure

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90005

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 5, 2017

Complainant, a litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a judge of the U.S. Court of Appeals for the First Circuit. Complainant alleges that the circuit judge improperly dismissed a misconduct complaint that complainant had filed against a district judge and five appellate judges in the First Circuit.¹ The misconduct complaint is frivolous and not cognizable.²

¹ In the earlier misconduct complaint, complainant alleged that the district judge was biased against complainant, "wrongfully lied," violated local rules on summary judgment, and violated the Code of Conduct for United States Judges, as well as numerous federal criminal statutes. He lodged the same allegations against the appellate panel that summarily affirmed the district judge's decision, and the circuit judges who denied his petition for panel rehearing and rehearing en banc. Complainant filed a petition for review of the circuit judge's order dismissing the misconduct complaint, which is currently pending. See 28 U.S.C. § 352(c), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 18.

² The Judicial Council has authorized me, as Chief Circuit Judge, to dispose of this matter on the merits "in the interest of sound judicial administration." See Rules of Judicial-Conduct, Rule 25(f) ("If all circuit judges in regular active service are disqualified, the judicial council may determine whether . . . in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.").

Complainant alleges that the circuit judge's order dismissing complainant's previous misconduct complaint(s) is indicative of "illicit federal court bias" against his underlying cause of action. Complainant also alleges that the circuit judge failed to conduct an independent review of his misconduct complaint and "blindly" accepted the "falsified facts promulgated by the [judges]" in the underlying case. Complainant further alleges that the circuit judge violated the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) by improperly determining reasonably disputed issues and failing to appoint a special committee to investigate the earlier complaint(s).

Complainant requests that this complaint be referred to the Judicial Conference Committee on Judicial Conduct and Disability (Committee on Conduct and Disability) because he has accused all active First Circuit appellate judges of judicial misconduct and because all other judges within the First Circuit are "suspect as well" due to their relationships with the appellate judges.

As an initial matter, the judicial misconduct procedure does not provide a mechanism for referral of this complaint to the Committee on Conduct and Disability. See 28 U.S.C. § 351, *et seq.*, and Rules of Judicial-Conduct, Rule 21 (enumerating specific instances when a misconduct complainant may petition the Committee on Conduct and Disability for review of a judicial council order).

The complaint is baseless. Complainant has offered no facts in support of his conclusory allegations that the circuit judge was biased or improperly motivated in

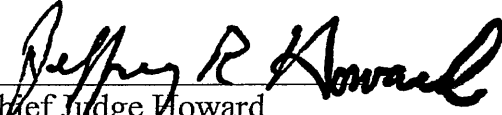
dismissing complainant's previous misconduct complaint. The reviewed record, including the pending misconduct complaint, the earlier complaint, the record of the underlying litigation, and the circuit judge's order of dismissal, offers no indication that the judge was biased against complainant, either because of his cause of action or for any other reason, or failed to adequately review complainant's allegations of judicial wrongdoing. The instant complaint amounts to nothing more than an attempt to misuse the misconduct complaint process to challenge the substance of the order dismissing the previous complaint. See Rules of Judicial-Conduct, Commentary to Rule 3 ("[A] complaint challenging the correctness of a . . . determination to dismiss a prior misconduct complaint [without more is] properly dismissed as merits-related . . ."). Accordingly, the misconduct complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

For these reasons, Complaint No. 01-17-90005 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)(C), respectively. In addition, complainant should be aware that continued attempts to use the judicial misconduct process to challenge the substance of judicial rulings that have been both fully and finally terminated and the subject of

previous unsuccessful misconduct complaints may precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct.

12/5/2017

Date


Chief Judge Howard