

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90030

BEFORE
Torruella, Circuit Judge

ORDER

ENTERED: OCTOBER 11, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a circuit judge engaged in misconduct when the judge dismissed complainant's previous misconduct complaint. The complainant alleges that circuit judge violated federal law and the Code of Conduct for United States Judges (Code of Conduct) when the judge ordered the dismissal of the complainant's misconduct complaint against a district court judge. Complainant contends that, in dismissing the previous misconduct complaint, the circuit judge engaged in perjury and conspiracy to obstruct justice.

The misconduct complaint is not cognizable. Judicial misconduct does not include allegations that are "directly related to the merits of a decision or procedural ruling." Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(1)(A). "This exclusion preserves the independence of judges in the

exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge's ruling." Rules of Judicial Conduct, Commentary on Rule 3. It, therefore, encompasses "a complaint challenging the correctness of a . . . determination to dismiss a prior misconduct complaint . . ." Id.

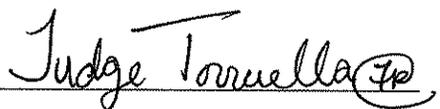
The present matter falls squarely within the cited rule. The misconduct complaint provides no evidence of bias by the circuit judge, but is based only on the complainant's disagreement with the judge's order dismissing complainant's previous misconduct complaint. As such, it is dismissed as merits-related, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B), and Commentary on Rule 3.

Because the misconduct complaint is also offered without any evidence that misconduct has occurred, it is also dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

For the reasons stated, Complaint No. 01-11-90030 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).

10/11/11

Date

Judge Torruella 

Judge Torruella