

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-18-90010

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 29, 2018

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Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit in connection with a civil rights case over which the judge presided. Complainant is not a party to this proceeding.<sup>1</sup> The misconduct complaint is baseless and is not cognizable.

Complainant alleges that the judge "acted in an arbitrary and reckless manner" and violated the Second and Fourteenth Amendments in ruling in favor of defendants in the civil rights case (to which complainant is not a party). Complainant further alleges that

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<sup>1</sup> This is complainant's third misconduct complaint. First, he filed a complaint alleging that a district judge engaged in judicial misconduct in presiding over complainant's civil rights case. Then Chief Judge Lynch dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 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. 01-12-90031, January 31, 2013; and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, June 19, 2013. Second, complainant filed a misconduct complaint against two district judges (one of whom was the subject of complainant's first misconduct complaint) and five appellate judges, alleging judicial misconduct in connection with the same civil rights case and its subsequent appeal. Judge Kayatta dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Kayatta, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-18-90002 -- 01-18-90008, October 26, 2018.

the judge was improperly motivated against plaintiffs and, therefore, wrongfully granted defendants' motion for summary judgment. Complainant concludes that the judge exceeded the court's authority in presiding over the case and failed to uphold the Constitution.

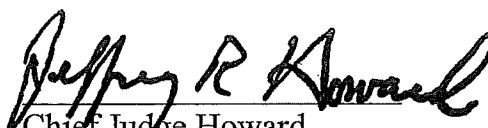
The reviewed record, including the misconduct complaint, the docket of the proceedings, the transcript of the summary judgment hearing, and the court's orders, provides no support for complainant's conclusory allegations of judicial wrongdoing. According to the record, a group of individual and organizational plaintiffs sued multiple state officials, alleging that a state statute was unconstitutional. After several parties left the case, the remaining plaintiffs and defendants cross-moved for summary judgment. The judge held a hearing on the summary judgment motions, during which the judge provided both sides ample time to present their arguments, asked probing questions of both plaintiffs' and defendants' counsel, and took the matter under advisement.

In subsequently granting defendants' summary judgment motion and dismissing the case, the judge issued a lengthy and detailed opinion, objectively outlining the parties' arguments, explaining the controlling law, and applying the law to the facts. As there is no support for complainant's claims that the judge acted arbitrarily, exceeded authority, was biased against plaintiffs, or engaged in other misconduct in presiding over the civil rights case, 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).

As the misconduct complaint is based exclusively on complainant's disagreement with the judge's dismissal of the case, the complaint is not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits related."). Accordingly, the complaint is dismissed, 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. 01-18-90010 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), respectively.

October 29, 2018  
Date

  
Chief Judge Howard