

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-09-90015

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 20, 2009

Complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a First Circuit district judge. The complainant alleges misconduct in connection with one of the complainant's multiple civil actions.¹ The complainant alleges that the judge exhibited bias against the complainant by improperly denying the complainant's motion for a permanent injunction, improperly denying the complainant's motion for the judge's disqualification, and by wrongfully dismissing the case. The complainant concludes that "[n]ot only has [the judge] fail[ed] to protect the civil rights of [the complainant], the judge himself has injured [complainant's] civil rights"

The complainant's allegations constitute a disagreement with the court's rulings, which is not a basis for a claim of misconduct. And there is no evidence of any bias by the judge in making those rulings. The complaint is baseless. The complaint, the case docket, and the relevant pleadings

¹Court records indicate that the complainant has filed five other civil cases in the district in the past two years, one of which is the subject of another judicial misconduct complaint against a different judge.

and court orders provide no evidence that the judge was biased in his handling of the case. Shortly after the complainant filed the motion for a permanent injunction, and several other motions, the judge ordered the complainant to "cease filing motions" until after a scheduled hearing occurred in a related case. The complainant promptly filed a motion to disqualify the judge contending that the judge was biased and incompetent, as evidenced, in part, by his failure to order service of process in a timely manner. The court denied that motion, as well, noting that the "fact that plaintiff is not satisfied with the Court's order to serve process . . . is no reason to request disqualification of a judge." Thereafter, the judge dismissed the case on the grounds that the court lacked subject matter jurisdiction and the case was time-barred. As there is no evidence that the judge was biased or mishandled the case, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C).

The complaint is also based exclusively on the complainant's disagreement with the court's rulings and, as such, is not cognizable. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rules of Judicial Misconduct, Rule 3(h)(3)(A). Accordingly, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaint No.01-09-90015 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

Date

10/20/09

Chief Judge Lynch

Santha L. Lynch