

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-11-90030

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BEFORE

Boudin, Lipez, Thompson, Circuit Judges  
O'Toole and Besosa, District Judges

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ORDER

ENTERED: JANUARY 20, 2012

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Petitioner, a pro se litigant, has filed a petition for review of Judge Torruella's order dismissing her complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a circuit judge in the First Circuit. The petitioner alleged that the circuit judge engaged in misconduct in ordering the dismissal of a prior misconduct complaint that the petitioner had filed against a district court judge.<sup>1</sup> The petitioner argued that the order dismissing the misconduct complaint demonstrated perjury and conspiracy to obstruct justice.

Judge Torruella dismissed the complaint. The Judge explained that 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), and that this exclusion encompasses "a complaint challenging the correctness of a . . . determination to dismiss a prior misconduct complaint . . ." Rules of Judicial Conduct, Commentary on Rule 3. As this matter fell squarely within the cited rule, it

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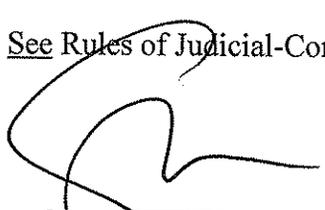
<sup>1</sup>The petitioner identified the district judge on the complaint form in this matter, as well, but did not include any allegations against him.

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

In the petition for review, the petitioner offers no additional information. She asks only that the Judicial Council review Judge Torruella's order dismissing the misconduct complaint under Title 18, presumably of the United States Code, and under the Code of Conduct for United States Judges (Code of Conduct).

The petition for review is without merit. While the Code of Conduct provides standards potentially applicable to judicial misconduct proceedings, see Code of Conduct, Canon 1 Commentary, the present matter does not implicate any of the provisions of the Code of Conduct, let alone the judicial misconduct statute. As Judge Torruella explained, absent evidence of bias or illicit motivation, a challenge to the merits of an order dismissing a judicial misconduct complaint is not cognizable under the judicial misconduct statute. See Rules of Judicial Conduct, Commentary on Rule 3. As there is no information suggesting bias or improper motive, the complaint was appropriately dismissed both as baseless, 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), respectfully.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90030 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

  
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Susan Goldberg, Acting Secretary