

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90002

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MARCH 19, 2013

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a district judge engaged in misconduct while presiding over complainant's petition for writ of habeas corpus. The complainant alleges that the judge's dismissal of the case was "highly prejudicial," and violated the complainant's Constitutional rights. Complainant asks that the district court's judgment be reversed and that habeas relief be granted.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for modifying an order in a pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19.

Moreover, the misconduct complaint is not cognizable. The complainant does

nothing more than disagree with the judge's rulings dismissing the proceeding. The reviewed record - including the misconduct complaint, and the docket, pleadings and orders issued in complainant's case - demonstrates that the district judge dismissed the case for failure to exhaust state remedies. The court had repeatedly explained this deficiency to the complainant both in the present proceeding and in a prior one that the court had dismissed on the same grounds.

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." Rules of Judicial-Conduct), Rule 3(h)(3)(A). As the misconduct complaint is based only on complainant's disagreement with the judge's rulings in the case, it is dismissed as "directly related to the merits of a decision," pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

As the complainant offers no evidence whatsoever of bias or other misconduct, the misconduct complaint is 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. 01-13-90002 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).

3/19/13

Date

Sandra L. Lynch

Chief Judge Lynch