

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90025

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: FEBRUARY 23, 2016

Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge improperly dismissed complainant's civil cases and limited his right to file further similar claims. The misconduct complaint is frivolous and not cognizable.

Complainant alleges that the judge wrongfully denied complainant's request to order a jury trial in a state court civil case that complainant had filed over a decade ago and which complainant had lost, after a bench trial. Complainant asserts that the federal court improperly failed to investigate complainant's claim that the state court had violated complainant's rights under the federal and state constitutions by denying him a jury trial. Complainant contends that the judge improperly relied on "the illegal bench trial" in state court as "legal authority" for declaring complainant "a restricted filer." Complainant

further challenges the propriety of the state court appellate process. Complainant concludes that the federal and state court judges have "betrayed the public trust," and that the federal district court is legally obligated to direct the state court to hold a jury trial.

The reviewed record indicates that, over the past decade, complainant has filed 10 civil cases in the federal district court, six (6) of which he brought against the state judicial system asserting his right to a jury trial in the referenced case.¹ Ultimately, the magistrate judge to whom one such case was assigned issued a report: recounting the lengthy chronology of complainant's unsuccessful litigation in state and federal court; reiterating the grounds for the dismissal of complainant's primary claim - that federal district courts have no power to review state court judgments; and, citing the numerous warnings that complainant had received regarding the potential for sanctions, recommending dismissal of the case, as well as the imposition of an injunction prohibiting complainant from filing further duplicative claims related to the state court litigation or its appeals. The district judge approved the report and recommendation, and judgment issued accordingly.

The complaint and the reviewed record supply no facts whatsoever indicative of wrongdoing on the part of the judge. The complaint is based only on complainant's disagreement with the court's orders denying his requests for the sought after relief and with the injunction limiting his right to file further such cases. Accordingly, the

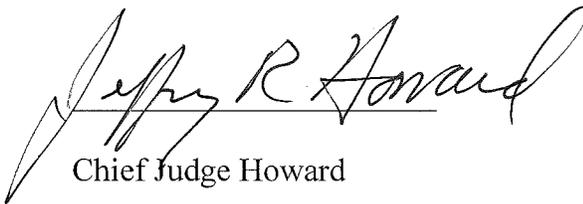
¹ The judge who is the subject of the present misconduct complaint presided over four (4) of the six (6) federal cases.

misconduct complaint is dismissed as frivolous and as not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C), 11(c)(1)(B) and 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.").

For the reasons stated, Complaint No. 01-15-90025 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), respectively.

2.23.16

Date


Chief Judge Howard