

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-16-90025

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BEFORE  
Torruella, Circuit Judge

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ORDER

ENTERED: NOVEMBER 4, 2016

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Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a First Circuit appellate judge. Complainant alleges that the judge improperly dismissed complainant's previous misconduct complaint against a First Circuit district judge.<sup>1</sup> Complainant further alleges that the appellate judge was biased against complainant and failed to act on her appeal. The misconduct complaint is frivolous and not cognizable.

Complainant "charge[s the appellate judge] with every violation, disability and misconduct" that she had previously asserted against the district judge. She alleges that

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<sup>1</sup> This is complainant's second misconduct complaint. Complainant previously filed a misconduct complaint against a First Circuit district judge and magistrate judge. The misconduct complaint was dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). The Judicial Council affirmed the order of dismissal. In the present complaint against the appellate judge, complainant only challenges the dismissal of the misconduct complaint she brought against the district judge.

the appellate judge wrongfully dismissed her prior misconduct complaint in order to protect the district judge. See nte. 1, *supra*.

Complainant also alleges that the appellate judge was biased against complainant and acted with an improper motive in connection with her appeal.<sup>2</sup> She contends that the judge neglected to take any action on the appeal "for over a year" because "the defendants . . . commanded [the judge] to disregard [the] case . . . ." Complainant concludes by requesting "financial restitution."

As an initial matter, the judicial misconduct procedure does not provide an avenue for affording financial relief. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

Moreover, complainant's conclusory allegations of judicial wrongdoing by the appellate judge are wholly unsupported. Complainant provides no facts indicating that the judge harbored any illicit motivation either in reviewing complainant's misconduct complaint or in connection with her appeal. "[A] complaint challenging the correctness of a . . . determination to dismiss a prior misconduct complaint [without more is] properly dismissed as merits-related . . . ." Rules of Judicial-Conduct, Rule 3 Commentary. Accordingly, the claim that the judge wrongfully dismissed complainant's misconduct

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<sup>2</sup> Complainant appealed the dismissal of the civil rights case that had been the subject of her first judicial misconduct complaint. See nte. 1, *supra*.

complaint is dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

With respect to complainant's appeal, there is no indication that the matter has even been referred to the subject judge, let alone that the judge has intentionally disregarded it. Since the appeal was filed, the court has issued two preliminary orders, both by another judge. Complainant's contention that the judge has intentionally disregarded the case at the direction of the defendants is presented without any basis in fact and is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(C). To the extent that complainant is contending that the judge is responsible for alleged delays in the court's handling of this proceeding, the claim is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules for Judicial-Conduct, Rule 11(c)(1)(B); see also Rules of Judicial-Conduct, Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

For the reasons stated, Complaint No. 01-16-90025 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

11/4/2016  
Date



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Judge Torruella