

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90029 and 01-16-90030

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 22, 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 and magistrate judge. Complainant alleges that the district and magistrate judges were biased against complainant as a pro se litigant and, as a result, improperly dismissed numerous civil proceedings to which complainant was a party. The misconduct complaint is baseless and not cognizable.

Complainant alleges that the district and magistrate judges engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts "by misunderstanding, refusing or being able to follow clear rules of judicial conduct and civil procedure." Complainant maintains that the judges' "misconduct indicates [that] they may have a mental disability which prevents them from . . . discharging . . . their judicial duties without bias"

Complainant asserts that the magistrate judge issued rulings, despite a conflict of interest arising from his involvement in an unrelated state court criminal prosecution of complainant. Complainant alleges that the district judge improperly denied complainant's request for court appointed counsel and remanded the cases to state court. Complainant adds that, since they were biased against her because she is a pro se litigant unable to afford counsel, the judge and the magistrate judge "effectively joined [the defendants'] conspiracy to deprive [complainant] of due process and equal protection"

The misconduct complaint is baseless and not cognizable. In the one case that complainant addresses in any detail, the magistrate judge granted complainant's motion to proceed *in forma pauperis* (IFP) and denied, without prejudice, complainant's motion to amend her complaint. There is no evidence that the magistrate judge played any role in a previous state court prosecution of complainant and, moreover, the involvement as alleged would not alone demonstrate a conflict of interest on the part of the magistrate judge.

The district judge subsequently issued a lengthy memorandum and order in which the court thoroughly reviewed complainant's motion for appointment of counsel and substantive claims before denying the motion and dismissing the claims as barred by judicial and sovereign immunity, as well as by the *Rooker-Feldman* doctrine and for failure to state a claim. The judge dismissed complainant's other related cases for absence of jurisdiction or improper removal.

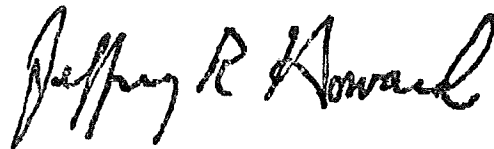
The misconduct complaint and the reviewed record of complainant's proceedings contain no information suggesting that the district judge or magistrate judge were improperly motivated - either because complainant was pro se or for any other reason. As complainant's conclusory allegations of judicial bias, conflict of interest, disability and other wrongdoing are presented without any basis in fact, the misconduct complaint is dismissed as baseless. See 28 U.S.C. §352(b)(1)(A)(iii), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Where, as here, the misconduct complaint derives only from complainant's disagreement with the substance of the court's rulings, it is not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and Rule 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 Nos. 01-16-90029 and 01-16-90030 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

11/22/16

Date



Chief Judge Howard