

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-17-90008, 01-17-90009, and 01-17-90010

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BEFORE  
Torruella, Circuit Judge

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ORDER

ENTERED: DECEMBER 15, 2017

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Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against three First Circuit appellate judges. Complainant alleges judicial misconduct in connection with complainant's appeal of her civil case over which the subject judges presided. The misconduct complaint is baseless and not cognizable.

Complainant alleges that the judges engaged in misconduct by denying complainant's motion to recuse from the appeal of her case. Complainant asserts that the judges were biased because they each had a financial interest in one of the defendant corporations, including a credit card, a mortgage, and a stock holding, respectively.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including the recusal of a

judge. See 28 U.S.C. § 351, *et seq.*; see also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Moreover, the complaint is not cognizable. The reviewed record, including the misconduct complaint and the dockets of the relevant proceedings, indicates that complainant had originally sued in state court, and the case was removed to federal district court. The district court dismissed the case on the ground that complainant presented no evidence to support her claims. Months later, complainant sued the same defendants in federal court, and the district court dismissed the case for failure to state a claim and as precluded by *res judicata*. On appeal, complainant filed a motion for recusal of each of the judges assigned to the reviewing panel based on their purported financial interests in one of the defendants, and submitted copies of the judges' Financial Disclosure Reports. The court denied complainant's motion for recusal, as well as her subsequent petitions for mandamus and for rehearing.


Complainant's allegations that the judges were biased amount to nothing more than a challenge to the correctness of the court's decision denying complainant's motion(s) for recusal. "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, including a failure to recuse, without more, is merits-related." Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the

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).<sup>1</sup>

As complainant provides, and the record reveals, no evidence of judicial bias or other wrongdoing, the complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

For the reasons stated, Complaint Nos. 01-17-90008, 01-17-90009, and 01-17-90010 are 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.

12/15/2017  
Date

  
Judge Torruella

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<sup>1</sup> Although not necessary to the disposition of the complaint, there is no support for the assertion that any of the appellate judges had a financial interest that would have warranted recusal. See, e.g., Code of Conduct for United States Judges (Code of Conduct), Canon 3(C)(1)(c) (requiring judicial disqualification from any "proceeding in which . . . the judge knows that the judge . . . has a financial interest . . . in a party to the proceeding . . ."). Neither a credit card, nor a mortgage constitutes a "financial interest" for purposes of recusal. See id., Canon 3(C)(3)(c) ("For purposes of [Canon 3 of the Code of Conduct] . . . 'financial interest' means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party . . ."). The form that complainant submitted indicating the third judge's ownership of stock several years earlier similarly fails to evidence any disqualifying financial interest at the time of complainant's appeal. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 3 (explaining that a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint, but a violation of the Code of Conduct does not necessarily constitute judicial misconduct under the statute).