

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90002

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MAY 2, 2011

Complainants have filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. The complainants, who were not parties to the litigation, allege that the judge engaged in misconduct when the judge issued a particular ruling.

The complainants allege that the judge's ruling disregarded legal precedent, and was incorrect, as a matter of fact and law, and so exceeded judicial authority. They allege that the merits of the judge's ruling itself demonstrates bias.

The complaint is not cognizable. "Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling." Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A). "This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to

collaterally attack the substance of a judge's ruling." Rules of Judicial-Conduct, Commentary on Rule 3.

This misconduct complaint falls squarely within this rule. The judicial misconduct complaint procedure does not afford an avenue for challenging the merits of a judge's decision. The complainants provide no evidence in support of their claim of bias or impropriety. They offer nothing more than a judicial ruling with which they disagree. Accordingly, the complaint is dismissed as merits-related, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

For the reasons stated, Complaint No. 01-11-90002 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).

5/2/11

Date

Sandra L. Lynch

Chief Judge Lynch