

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90006

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: MAY 18, 2011

Complainants have filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. The complainants alleges that the district judge engaged in misconduct in the form of bias while presiding over the complainants' civil action.

The complainants allege that the judge exhibited a "deliberate and obvious prejudice" against them because they appeared pro se. They allege that the judge failed to order the parties to replead the case, after it was removed to federal court, and to require the defendants to file an answer or responsive pleading within the time allotted by the Federal Rules of Civil Procedure. The complainants assert that the judge improperly ordered a scheduling conference before the defendants filed a responsive pleading, failed to recognize that the defendants were in default, improperly allowed the defendants' defective motion to enlarge the time in which to file a responsive pleading, and ultimately

allowed the defendants' motion to dismiss which was "loaded with false declarations." The complainants conclude that the judgment in the case was contrary to the rules of federal procedure and demonstrates "a gross and obvious miscarriage of justice," in violation of the complainants' right to due process.

The complaint does not state a claim of bias, but merely of disagreement with the court's orders. The complainants rely exclusively on court orders with which they disagree as purported evidence of bias. Unfavorable rulings do not alone constitute evidence of improper judicial motivation. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling.").

The reviewed record indicates that, shortly after the case was removed, the court allowed the defendants' motion for several additional days in which to respond to the complainants' request for default judgment. Although not necessary to the determination of the matter, the court did not, as alleged, order a scheduling conference before the defendants filed a responsive pleading. Nor do the Federal Rules of Civil Procedure require repleading by the parties after a case is removed.

In response to the defendants' subsequently filed motion to dismiss, the judge reviewed the facts and determined that, under the governing law, the district court lacked jurisdiction to entertain the complainants' claim, and thus remanded the case to state court. As there is no evidence whatsoever of bias or improper judicial motivation in

connection with this order or otherwise, the complaint is dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). Since the complainants allege nothing more than substantive rulings with which they disagree, the complaint is also dismissed as merits-related, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-11-90006 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).

5/18/11

Date

Andrew L. Lynch

Chief Judge Lynch