

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90011

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: SEPTEMBER 10, 2015

Complainant is a pro se plaintiff in a civil case. Complainant has filed a complaint of misconduct, under 28 U.S.C. § 351(a), alleging that the presiding district judge engaged in misconduct by allowing the defendant to file a reply to complainant's response to a motion and by subsequently denying complainant's motion for recusal. The misconduct complaint is not cognizable and is frivolous.

Complainant alleges that, in allowing the defendant's motion for leave to file this pleading only six days after it was filed and before expiration of the objection period, the judge exhibited bias and prejudice, violated complainant's Constitutional right to due process, and acted without jurisdiction. Complainant continues that, asserting these claims, she filed a motion for the judge to recuse which the court wrongfully denied. Citing numerous Rules of Civil Procedure, the disqualification statute, 28 U.S.C. § 455,

and case law, complainant concludes that the order allowing the defendant to file the reply is void and that the judge has assisted defense counsel in "committing fraud."

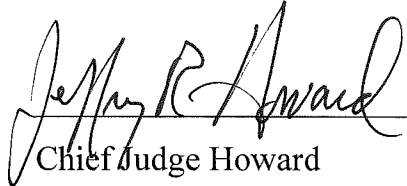
The reviewed record indicates that, as alleged, six days after it was filed, the judge allowed defendant's motion for leave to file a reply to complainant's response to defendant's motion. The judge's ruling on defense counsel's motion before expiration of the objection period is not indicative of bias. See Boudin, C.C.J., Amended Order, Complaint No. 406, September 9, 2005, at 2-3 ("The issuance of the order of dismissal prior to receiving an opposition [to the motion to dismiss] does not corroborate the claim of bias; the court was under no automatic obligation to await a reply . . .").

Complainant offers no evidence that the judge harbored any bias or prejudice in allowing defendant's motion for leave to reply or otherwise in connection with complainant's case. The complaint rests only on complainant's disagreement with the judge's orders allowing defendant to file the reply and denying the motion for recusal. Such claims are not cognizable under the judicial misconduct statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), 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 . . ., including a failure to recuse . . ."). Accordingly, the complaint is dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

For the reasons stated, Complaint No. 01-15-90011 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), respectively.

9/10/2015

Date


Chief Judge Howard