

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-15-90026

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: MARCH 11, 2016

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Complainant, a pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge was biased and improperly denied a motion that complainant had filed. The misconduct complaint is baseless and not cognizable.

Complainant asserts that the judge was biased against him because he appeared pro se. Complainant contends that the judge improperly denied complainant an evidentiary hearing on his motion to seal his criminal case file, as required by the Due Process Clause, and wrongfully denied the motion.

Complainant, who had been convicted and sentenced following a jury trial in another country, filed the motion several years after transferring to the district to serve out the remainder of a term of supervised release. Complainant recounts the alleged

inequities in the underlying criminal trial and asserts that the district court to which he was originally transferred (not in the First Circuit) essentially mistranslated the charge on which complainant was convicted.

Complainant alleges that the judge's order denying complainant's motion to seal contains factual errors and "defames and slanders [complainant's] character and name." Complainant maintains that the judge sought to "smear and defame [complainant's] name all over the public forum," thereby ruining his reputation and undermining his ability to obtain employment. Complainant concludes that "[i]t is clear" that the judge had decided to deny complainant's motion before the judge "even began to start writing [the] decision and this behavior is not becoming of a [j]udge in the United States judicial system."

There is no evidence of bias, either because complainant was pro se or for any other reason, in either the complaint or in the reviewed record of the case. First, complainant had no legal or ethical entitlement to a hearing on the motion to seal. Further, the record demonstrates that the judge issued a substantive memorandum and order addressing each of the issues raised by the motion. In denying the motion, the judge explained, in part, that: the public availability of complainant's conviction is not a "punishment" under the Double Jeopardy Clause; there is a presumption to public access to judicial records that is not outweighed by complainant's rationale; and the court lacks jurisdiction to expunge the criminal record for purely equitable reasons. As the allegation of bias lacks any factual support, it is dismissed as unfounded, pursuant to 28 U.S.C. §

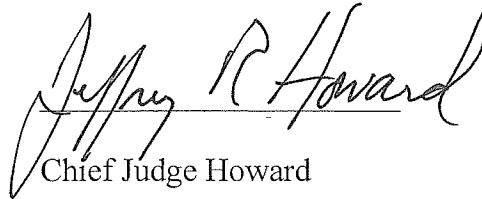
352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Where, as here, the misconduct complaint derives only from complainant's disagreement with the substance of the court's ruling, it is not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rules 11(c)(1)(B). See also id., 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 No. 01-15-90026 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)(D), respectively.

3.11.16

Date

  
Chief Judge Howard