

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90001

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: APRIL 29, 2016

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges that the judge engaged in bias and discrimination in presiding over complainant's civil rights case. The misconduct complaint is baseless and not cognizable.¹

Complainant alleges that the district judge abused his discretion and engaged in bias, prejudice and racial discrimination when he issued a memorandum and order dismissing complainant's case. Complainant asserts that the judge denied "without just cause" complainant's request for the appointment of counsel, warranted by complainant's

¹This is complainant's second misconduct complaint. In 2012, he filed a complaint against a magistrate judge alleging discrimination and misconduct in connection with another civil case. Then Chief Judge Lynch dismissed that complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Order, Lynch, C.C.J., In Re: Judicial Misconduct Complaint No. 01-12-90017, October 1, 2012. The Judicial Council affirmed the chief judge's order of dismissal. See Order, Judicial Council of the First Circuit, In Re: Judicial Misconduct Complaint No. 01-12-90017, April 2, 2013.

indigent status, and maintains that the judge denied complainant's motions "without any justification . . . ," in order to protect the defendant from having to produce discovery and prevent the complainant's valid claims from proceeding to trial. Complainant concludes that, by failing to recognize the civil rights violations perpetrated by the defendant in his case, the judge has engaged in discrimination, abused his discretion and violated complainant's civil rights. Complainant asks that the court's erroneous rulings be reversed, that he be appointed counsel, and that he be awarded extensive compensatory and punitive damages from the defendant.

As an initial matter, the judicial misconduct complaint process does not provide a mechanism for reversing a judge's ruling or issuing an order in a case, including the appointment of counsel or an award of damages. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19 and 20.

Moreover, complainant's charges of judicial wrongdoing are not supported by any evidence. The reviewed record indicates that the judge allowed complainant to amend his initial, deficient pleading before issuing a substantive memorandum and order. The court determined that the complainant offered no facts or supporting information concerning his age, disability or denial of benefits that formed the basis of his lawsuit. Noting that the complainant may be able to refile some of his claims in state court, the judge dismissed the case and denied complainant's motion to proceed *in forma pauperis*

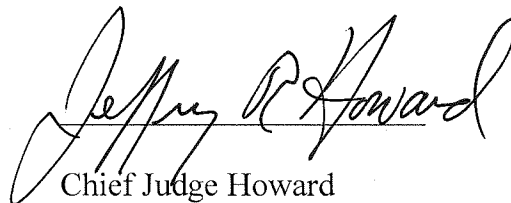
as moot.² Nothing in this ruling, in the record of the case or in the misconduct complaint indicates that the judge sought to undermine complainant's success in the litigation or was otherwise improperly motivated in ruling on complainant's case. As there is no evidence in support of the allegations of judicial wrongdoing, the misconduct 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).

Because the misconduct complaint is based exclusively on complainant's disagreement with the judge's memorandum and order, it is dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also 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. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related.").

For the reasons stated, Complaint No. 01-16-90001 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.

4.29.16

Date


Chief Judge Howard

²The docket contains no indication that complainant filed a motion for the appointment of counsel.