

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-16-90009

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: MAY 25, 2016

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Complainant, an incarcerated pro se litigant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit magistrate judge. Complainant alleges that the magistrate judge was biased in favor of respondent, a prison warden, and, as a result, wrongfully denied complainant's motion seeking leave to restyle his petition for a writ of habeas corpus as a civil rights claim against federal officials. Recounting the alleged constitutional violations he suffered in prison, complainant contends that the magistrate judge engaged in an "egregious dereliction of duty" when he dismissed the petition. Complainant requests that no new cases be assigned to the magistrate judge for six months and that another judge be assigned to complainant's case.<sup>1</sup>

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<sup>1</sup> Complainant includes allegations against clerk's office staff for allegedly failing to comply with the magistrate judge's directive to send complainant a new application to present his claims. In one of its several orders, the court directed the clerk to provide complainant with a blank application to proceed without prepaying fees and a guide to filing a civil action. It is not clear from the record whether this

As an initial matter, the judicial misconduct complaint process does not provide an avenue for obtaining an order in a pending or closed case, including the recusal of a judge or the reassignment of a case. 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, the misconduct complaint is baseless and not cognizable. There is no information in the complaint or in the reviewed record suggesting that the magistrate judge was biased or improperly motivated. The reviewed record indicates that, in denying complainant's motion to amend the complaint and dismissing the petition, the magistrate judge thoroughly explained the differences between a habeas petition and a civil rights complaint and informed complainant of the appropriate procedure for filing a civil complaint.<sup>2</sup> Neither the court's orders, nor any other information in the complaint or in the record of the case, offer any support for complainant's allegations of judicial bias, "dereliction of duty" or other wrongdoing. Accordingly, 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).

Where, as here, the misconduct complaint derives only from complainant's disagreement with the substance of the court's rulings, it is not cognizable. See 28 U.S.C.

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instruction was followed. Complainant states that he has had difficulty with the receipt of mail and he filed a notice of change of address several weeks after the order issued. Regardless, the claim of staff error is not cognizable under the judicial misconduct statute. See 28 U.S.C. § 351, *et seq.*

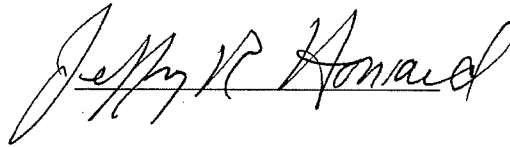
<sup>2</sup> Complainant had consented to jurisdiction by a magistrate judge.

§ 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and 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. 01-16-90009 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, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

5.25.16

Date



Chief Judge Howard