

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90012

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 21, 2010

Complainant, a pro se litigant, filed a complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. The complainant alleges that the judge engaged in misconduct while presiding over the complainant's appeal of an administrative agency decision.

The complainant alleges that the judge improperly remanded the complainant's case on the ground that the record did not contain a necessary medical opinion. The complainant contends that this decision was erroneous because the relevant opinion was, in fact, included in the record. The complainant infers that the judge harbored an illicit "intent" in issuing this ruling, and concludes that it denied him his constitutional right to litigate his case (including the right to present witnesses and engage in discovery).

The complainant further charges that the judge improperly denied him the opportunity to oppose the defendant's motion for remand, and failed to advise him, as a pro se litigant, of the "legal course of action" for objecting to the order.

The complaint is baseless. The reviewed record -- including the misconduct complaint, the docket, the relevant pleadings and the remand order -- provides no evidence that the judge was improperly motivated in issuing the order of remand or otherwise in his handling of the proceeding. The order at issue explains that it remands the case for the purpose of obtaining medical opinion necessary to evaluate the complainant's condition which were not outdated. There is no evidence of bias or improper judicial motivation in this order or elsewhere in the record of the case. Therefore, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 11(c)(1)(C). Insofar as the complaint is based exclusively on the complainant's disagreement with the order of remand, it is also not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).¹

The related charge that the judge denied the complainant the opportunity to oppose the defendant's motion for remand is frivolous. Forty days elapsed between the filing of the defendant's motion for remand and the court's order, during which time the complainant did not file an opposition. Any claim that the judge somehow interfered with the complainant's ability to exercise his right in this regard is baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

¹Although not relevant to the determination of the matter, the complainant states that his doctor told him that the necessary medical report had been submitted (though he does not state to whom it had been submitted). Clerk's Office staff reports that they that have no indication of having received the administrative records in the complainant's case. There is no evidence of clerical error on the part of the district court but, regardless, any such error would not suggest judicial misconduct. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005.

Finally, the judge was not under any legal or ethical obligation to advise the complaint on how to object to the court's order of remand or to otherwise provide him legal advice. This charge is dismissed as not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated, Judicial Misconduct Complaint No.01-10-90012 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

6/18/10
Date

Sandea L. Lynch
Chief Judge Lynch