

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-20-90013

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BEFORE  
Howard, Chief Circuit Judge

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ORDER

ENTERED: APRIL 9, 2021

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Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Complainant alleges judicial misconduct in connection with his civil case over which the judge presided. The misconduct complaint is frivolous and is not cognizable.

Complainant challenges the judge's order remanding his case to the defendant federal agency and asserts that the defendant "play[ed]" a "l[e]gal game" with the judge. Complainant contends that his "case should go forward, not backwards" and that "there should be a simpler way to solve [his] case." Complainant requests a jury trial and the appointment of counsel.<sup>1</sup>

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<sup>1</sup> Complainant seems to allege that clerk's office staff delayed his appeal of the subject judge's order remanding the case to the federal agency and did not answer his telephone calls. Complainant provides, and the record includes, no information to support these claims. Further, the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge or otherwise appropriate for resolution by means of the judicial

As an initial matter, the judicial misconduct procedure does not provide an avenue for ordering a jury trial or appointing counsel, as complainant requests. 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.

The reviewed record, including the misconduct complaint and the docket of the underlying proceeding, provides no basis for complainant's conclusory allegations of judicial misconduct. According to the record, complainant filed a civil case, challenging the defendant federal agency's rejection of complainant's request for a waiver of the agency's determination that complainant had received funds to which he was not entitled. The agency filed a motion to reverse its decision and remand the matter to the agency for further proceedings, explaining that its decision had been based on a miscalculation and that remand could result in a more favorable outcome for complainant. Complainant objected to the motion and requested a hearing. The judge granted the defendant's motion and remanded the matter to the federal agency, pursuant to the governing statute.

Complainant fails to allege any facts and the record provides no evidence suggesting that the judge was improperly motivated in remanding the matter, pursuant to the applicable federal law, or otherwise in presiding over complainant's case. Accordingly, the misconduct complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). Where, as here,

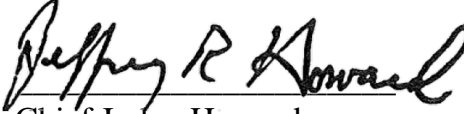
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misconduct process. See, e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002 (June 11, 2015), at p. 7, 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings.

there is no evidence of improper judicial motivation, complainant's disagreement with the judge's order of reversal and remand is 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 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling . . . . If the decision or ruling is alleged to be the result of an improper motive . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision.").

For the reasons stated, the misconduct complaint 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).

April 9, 2021  
Date

  
Chief Judge Howard