

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90027

BEFORE
Howard, Chief Circuit Judge

ORDER

ENTERED: DECEMBER 1, 2016

Complainant, an incarcerated criminal defendant, has filed a complaint of misconduct, under 28 U.S.C. § 351(a), against a First Circuit district judge. Complainant alleges judicial misconduct in connection with a criminal proceeding over which the judge presided several years ago. The misconduct complaint is frivolous and not cognizable.

This is complainant's second baseless misconduct complaint. In 2015, complainant filed a misconduct complaint against a district judge in connection with a related civil proceeding. That complaint was dismissed as frivolous and not cognizable. See Order, Howard, C.C.J., In Re: Judicial Misconduct Complaint No. 01-15-90015, November 12, 2015.

Complainant presently asserts that the district judge lacked authority to sentence complainant to prison. He contends that, as a result, the judge's factual findings should be voided, that complainant's sentence should be vacated, that the judge should apologize for the unconstitutional deprivation of complainant's liberty, and that he should be awarded compensatory and punitive damages.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a case or the award of damages, as requested by complainant. 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.

Complainant does not even allege, let alone provide evidence, that the district judge engaged in behavior that would constitute judicial misconduct. See Rules of Judicial-Conduct, Rule 3(h). The record indicates that, after complainant pleaded guilty to criminal charges, the district judge sentenced complainant to prison. Complainant did not appeal the conviction or his sentence.

As there is no information in the complaint or in the record indicating that the district judge engaged in misconduct, the complaint is dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

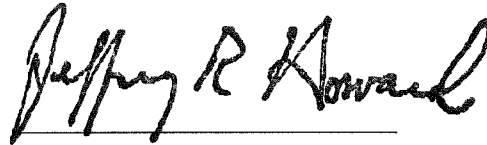
Insofar as complainant is objecting to the substance of the court's rulings, the complaint is not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the

correctness of a judge's ruling . . . without more, is merits-related."). Accordingly, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated, Complaint No. 01-16-90027 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)(C), respectively.

12/1/2016

Date

A handwritten signature in black ink that reads "Jeffrey R. Howard". The signature is written in a cursive style and is positioned above a horizontal line.

Chief Judge Howard