

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90023

BEFORE

Lynch and Kayatta, Circuit Judges
Laplante, Hillman, and Levy, District Judges

ORDER

ENTERED: NOVEMBER 7, 2018

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's order dismissing a complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Petitioner alleged judicial misconduct in connection with a civil matter over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

In the original complaint, petitioner alleged that, while presiding over petitioner's civil rights case, the judge was biased in favor of the attorney for one of the defendants because of a purported friendship between the judge and the lawyer. Petitioner also alleged that the judge coordinated with this attorney to improperly vacate a default judgment against his client *sua sponte*. Petitioner further alleged that the judge wrongly

"removed" the assigned magistrate judge from the case, without advance notice, so that the attorney could obtain favorable rulings on behalf of his client. Finally, petitioner alleged that the judge improperly delayed in ruling on petitioner's request for a hearing on a motion for recusal and incorrectly denied that motion.

In dismissing the misconduct complaint, Chief Judge Howard determined that the record -- including the misconduct complaint, the district court's docket, and the court's orders -- contained no information suggesting that the judge was biased based on a relationship with defendant's attorney or otherwise acted improperly. Chief Judge Howard observed that the judge vacated the default judgment *sua sponte* because petitioner had failed to properly execute service and that the judge simultaneously extended the time for petitioner to properly effectuate service. Chief Judge Howard further observed that the judge denied petitioner's request to reconsider the court's order vacating the default judgment, but issued an order explaining the rules governing service of process, recommending that petitioner use the United States Marshals Service to serve the summons and complaint, and further extending the time to complete service.

Chief Judge Howard also noted that the judge denied petitioner's motion for recusal in an order explaining that the judge's professional acquaintance with defendant's attorney did not warrant recusal. Chief Judge Howard additionally observed that the judge had not "removed" the magistrate judge from the case. In response to petitioner's request for the magistrate judge to preside over the case, the judge pointed petitioner to the Notice and Procedures regarding Consent to Proceed before a U.S. Magistrate Judge,

and petitioner subsequently filed a Refusal to Consent to Proceed before a U.S. Magistrate Judge.

Because petitioner's conclusory allegations of judicial bias and other wrongdoing were presented without any supporting evidence, Chief Judge Howard dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability (Rules of Judicial-Conduct), Rule 11(c)(1)(D). Insofar as petitioner's remaining claims were based exclusively on petitioner's objections to the court's orders, including the denial of petitioner's motion for recusal and the order setting aside the default, Chief Judge Howard dismissed the complaint as not cognizable, pursuant to 28 U.S.C. § 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, including a failure to recuse, without more, is merits-related."). Finally, Chief Judge Howard also dismissed petitioner's claim regarding the alleged delay in ruling on petitioner's request for a hearing on the motion for recusal as both unfounded (as no such request was docketed) and as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B); Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.").

In the petition for review, petitioner claims that Chief Judge Howard misinterpreted petitioner's allegations and erroneously dismissed the misconduct complaint.

The petition for review is meritless. Petitioner offers no facts in the petition for review, let alone any that undermine the Chief Judge's summary of petitioner's misconduct complaint or the record of the underlying case. See Commentary to Rules of Judicial-Conduct, Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related. . . . [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . ."). As the Chief Judge concluded, neither the misconduct complaint nor the reviewed record offers any indication that the judge was biased or engaged in other wrongdoing. Chief Judge Howard correctly determined that the misconduct complaint was baseless and, as it derived exclusively from petitioner's disagreement with the court's orders, not cognizable. See Rules for Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, Chief Judge Howard appropriately dismissed the misconduct complaint, 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.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-17-90023 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

November 7, 2018
Date



Susan Goldberg, Secretary