

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE

COMPLAINT NOS. 01-17-90011, 01-17-90012, 01-17-90013, 01-17-90014, 01-17-90015, 01-17-90016, 01-17-90017, AND 01-17-90018; AND COMPLAINT NO. 01-17-90021

BEFORE¹

Torruella, Thompson, and Kayatta, Circuit Judges
Hillman and Delgado-Hernández, District Judges

ORDER

ENTERED: JULY 12, 2018

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's orders dismissing petitioner's two misconduct complaint(s), under 28 U.S.C. § 351(a). Petitioner filed one complaint against five (5) judges of the U.S. Court of Appeals for the First Circuit and three (3) district judges in the First Circuit (Nos. 01-17-90011 -- 01-17-90018).² Petitioner filed the other complaint against a different district judge in the First Circuit (No. 01-17-90021). Petitioner alleged misconduct in connection with the

¹ The Judicial Council has determined that "it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges" participate in the disposition of this matter, pursuant to Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 25(g).

² The Judicial Council authorized Chief Judge Howard, as Chief Circuit Judge, to dispose of Complaint No. 01-17-90011 -- 90018 on the merits "in the interest of sound judicial administration." See Rules of Judicial-Conduct, Rule 25(f) ("If all circuit judges in regular active service are disqualified, the judicial council may determine whether . . . , in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits.").

dismissal of a previous misconduct complaint and civil matters over which the subject judges presided. Chief Judge Howard dismissed both misconduct complaints as baseless and as not cognizable.³ See nte. 2, supra; Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-17-90011 -- 01-17-90018, February 7, 2018; and Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-17-90021, February 7, 2018.

A. Complaint Nos. 01-17-90011 -- 01-17-90018

Petitioner originally alleged that the circuit judge who dismissed petitioner's previous misconduct complaint was biased, and that the members of the presiding Judicial Council panel (two (2) of the subject circuit judges and the three (3) subject district judges) wrongfully affirmed the order of dismissal in an effort to protect the subject judge and harm petitioner. Petitioner further alleged that the subject circuit judges mishandled and should have recused from petitioner's appeal of the civil case underlying his first misconduct complaint. See nte. 3, supra. Petitioner also alleged that all subject judges violated various civil and criminal statutes and unreasonably delayed in ruling on pending matters. Finally, petitioner requested recusal of the subject circuit judges from his appeal, transfer of the appeal to another circuit, and a transcribed hearing for Congressional review.

³ The present petition for review concerns petitioner's second and third misconduct complaints. In his first misconduct complaint, petitioner alleged that the presiding judge of a previous civil case was biased against him.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct procedure does not provide an avenue for affording petitioner's requested relief. 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.

Chief Judge Howard dismissed petitioner's allegations of bias and other judicial misconduct as baseless. Based on his review of the record, Chief Judge Howard observed that petitioner was dissatisfied with orders issued in the civil case that was the subject of his first misconduct complaint, including, but not limited to, orders denying motions for the judge's recusal and the order dismissing the case. See nte. 3, supra.

Chief Judge Howard further observed that, in petitioner's appeal of the civil case underlying his first misconduct complaint, petitioner requested the recusal of the subject circuit judges. The Court of Appeals denied the recusal motions, granted appellees' motions for summary disposition, and affirmed the judgment of the district court.

Chief Judge Howard explained that petitioner provided and the reviewed record revealed no evidence to support petitioner's allegations that the subject circuit judges were improperly motivated in issuing any orders in petitioner's appeal; that the circuit judge who dismissed petitioner's previous misconduct complaint or the members of the Judicial Council who affirmed the dismissal order were biased or failed to review adequately the allegations; or that the subject judges violated any laws or engaged in other wrongdoing. Accordingly, the Chief Judge dismissed the complaint as baseless,

pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Because there was no evidence of improper judicial motive, Chief Judge Howard dismissed petitioner's challenges to judicial orders, including the appellate court's orders issued in petitioner's appeal and those dismissing the previous misconduct complaint, as well as petitioner's allegations of judicial delay, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B); and id. Rule 3(h)(3)(A) and (B).⁴

B. Complaint No. 01-17-90021

Petitioner originally alleged that the district judge acted with bad faith and bias in presiding over another of petitioner's civil proceedings. Petitioner further asserted that the judge violated various civil and criminal statutes and unreasonably delayed in ruling on pending matters. Petitioner requested various relief, including, but not limited to, the judge's recusal, transfer of the case to another district, and attorney's fees.

In dismissing the complaint, Chief Judge Howard first explained that the misconduct procedure does not provide a mechanism for obtaining petitioner's requested relief. See 28 U.S.C. § 351, *et seq.*; and Rules of Judicial-Conduct, Rules 11, 19, and 20.

⁴ "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. . . . 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." Rules of Judicial-Conduct, Rule 3(h)(3)(A) and (B). See also id. Commentary on Rule 3 ("Any allegation [challenging a] . . . determination to dismiss a prior misconduct complaint[, without more, is] properly dismissed as merits-related . . .").

Chief Judge Howard dismissed the allegations against the district judge as baseless and as not cognizable. The Chief Judge observed that, according to the reviewed record, in the matter before the subject district judge, petitioner filed various motions, seeking, *inter alia*, an order voiding all rulings issued in his previous civil case. The Chief Judge further observed that the judge denied without prejudice several of petitioner's motions and directed petitioner to show cause why his complaint should not be dismissed. Subsequently, the judge determined that petitioner failed to show cause why the proceeding should not be dismissed, denied the motion to void orders, and dismissed the case. Petitioner appealed.

As there was no evidence to support petitioner's conclusory allegations that the judge acted in bad faith, was biased, or engaged in other wrongdoing in presiding over petitioner's civil case, Chief Judge Howard dismissed the complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D). Because there was no evidence of improper judicial motive, Chief Judge Howard dismissed petitioner's objections to the court's orders, as well as the claim of delay, as 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, Rules 3(h)(3)(A) and (B).

C. Petition for Review

In the petition for review, petitioner levies a series of confused and conclusory allegations of impropriety against the subject judges of both complaints (Nos. 01-17-

90011 -- 01-17-90018 and No. 01-17-90021). Petitioner repeats the allegations that the subject judges were biased against him, were engaged in a conspiracy to protect the judge who was the subject of his first misconduct complaint, see nte. 3, supra, and should have recused from his civil proceedings and misconduct matters. Petitioner also repeats the allegations that the subject judges violated various criminal laws. Petitioner adds that all subject judges have ruled improperly in his misconduct and civil matters by ignoring applicable law, citing invalid laws, and ignoring issues raised by petitioner.

Petitioner requests, in part: recusal of the only two (2) remaining Judicial Council members who are not the subjects of the misconduct complaints (or otherwise recused from this matter) from consideration of his petition for review; further explanation of the Judicial Council's authorization for Chief Judge Howard to review Complaint No. 01-17-90011 -- 01-17-90018, pursuant to Rule 25(f) of the Rules of Judicial-Conduct; transfer of his misconduct complaints to a different circuit; Congressional review of the misconduct complaints; and impeachment of the subject judges.

The petition for review is baseless. As an initial matter, the judicial misconduct procedure does not provide an avenue for affording any of petitioner's requested relief in the present matter.⁵ See 28 U.S.C. § 351 *et seq.*; and Rules of Judicial-Conduct, Rules 11, 19, and 20. Petitioner also offers no support whatsoever for his request for recusal of

⁵ Transfer of a misconduct complaint to a different circuit is limited to "exceptional circumstances," such as a "serious complaint" with multiple disqualifications among the Judicial Council. See Rules of Judicial-Conduct, Rule 26, and Commentary on Rule 26.

Judicial Council members from consideration of his petition for review. See Rules of Judicial-Conduct, Rule 25.

Moreover, petitioner provides no facts in the petition for review that undermine Chief Judge Howard's dismissal of petitioner's original allegations of judicial bias, conspiracy, conflict of interest, or other illegality. The petition for review amounts to nothing more than a continued challenge to the correctness of judicial orders with which petitioner disagrees, including those dismissing his misconduct complaints and civil cases. See Rules of Judicial-Conduct, Rule 3(h)(3)(A); and id. Commentary on Rule 3. Therefore, the misconduct complaints were correctly 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)(D).

For the reasons stated herein, the orders of dismissal issued in Judicial Misconduct Complaint Nos. 01-17-90011, 01-17-90012, 01-17-90013, 01-17-90014, 01-17-90015, 01-17-90016, 01-17-90017, and 01-17-90018 and No. 01-17-90021 are affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

7/12/2018
Date


Susan Goldberg, Secretary

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90021

BEFORE
Torruella, Thompson, and Kayatta, Circuit Judges
Hillman and Delgado-Hernández, District Judges

ORDER

ENTERED: JULY 12, 2018

On February 7, 2018, Chief Judge Howard, on behalf of the Judicial Council of the First Circuit, issued an order to show cause why complainant should not be precluded from filing any new judicial misconduct complaints without the Judicial Council's prior permission (Show Cause Order). The Show Cause Order, issued pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), stated that complainant had filed three (3) judicial misconduct complaints: No. 01-16-90033; Nos. 01-17-90011 -- 01-17-90018¹; and No. 01-17-90021. Each complaint was found to be patently without merit.

¹ Complaint Nos. 01-17-90011 -- 01-17-90018 was filed against eight (8) judges. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 8(a); and *id.* Commentary on Rule 8 (recommending providing "separate docket numbers for each judge.").

The Show Cause Order allowed complainant 42 days in which to file a written opposition with the Office of the Circuit Executive. During this time, complainant submitted a single petition for Judicial Council review of the dismissals of Complaint Nos. 01-17-90011 -- 01-17-90018 and No. 01-17-90021. Complainant included in the petition for review a brief and conclusory response to the Show Cause Order.

Complainant's opposition to the Show Cause Order fails to provide any valid reason why his right to file further misconduct complaints should not be limited. Complainant simply challenges the determination that each of his misconduct complaints was without merit. Complainant further suggests that certain members of the Judicial Council, as subject judges, are disqualified from participating in the show cause matter.² Complainant provides no evidence or other basis for revisiting the orders dismissing his three (3) misconduct complaints. Complainant's misuse of the complaint process -- by naming numerous judges in multiple baseless complaints solely because of their participation in an order to which complainant objected -- is precisely the type of circumstance contemplated by the adoption of the rules authorizing participation of subject judges (Rule 25 of the Rules of Judicial-Conduct) and restricting further such filings (Rule 10(a) of the Rules of Judicial-Conduct).³

² While the instant complaint (No. 01-17-90021) was not filed against members of the Judicial Council, a number of Council members were subjects of complainant's second complaint (Nos. 01-17-90011 -- 01-17-90018). See nte. 1, supra. The Judicial Council determined that subject judges should participate in the resolution of that matter, pursuant to Rule 25 of the Rules of Judicial-Conduct.

³ "A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure." Rules of Judicial-Conduct, Rule 10(a).

Accordingly, absent further order by the Judicial Council, no new complaints of judicial misconduct by complainant shall be accepted for filing without the prior written permission of the Judicial Council. See Rules of Judicial-Conduct, Rule 10(a).

7/12/2018

Date

A handwritten signature in black ink, appearing to read 'Susan Goldberg', written over a horizontal line.

Susan Goldberg, Secretary