

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-15-90009 and 01-15-90010

BEFORE
Lynch and Kayatta, Circuit Judges
Casper, McConnell and Delgado Hernández, District Judges

ORDER

ENTERED: JANUARY 8, 2016

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's order dismissing her complaint, under 28 U.S.C. § 351(a), against the First Circuit district judge and magistrate judge who presided over petitioner's civil rights case against multiple government agencies and officials. Petitioner originally alleged that the district and magistrate judges improperly delayed in ruling on petitioner's filings in violation of petitioner's right to due process. Petitioner complained that the district judge was "guilty of intentional delays on a most urgent matter" because the judge did not respond to her initial pleadings within 90 days and that the court's "refus[al] to act upon [petitioner's] emergency motions" made the judge an "accomplice" to the defendants' "criminal activity."

Petitioner further asserted that the judge's "habitual patterns of delay" extended to petitioner's prior cases and that the magistrate judge "blatantly violated an eighth amendment right [by] prolonging [petitioner's] cruel and unusual punishment." Petitioner concluded that the

judge and magistrate judge engaged in misconduct under Rule 3(h)(3) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) by harboring an illicit motive and employing an "habitual pattern of delays."¹ Finally, petitioner stated that she "believes" that the judge engaged in ex-parte communication with the defendants and that, by taking advantage of petitioner's pro se status, the judge is "guilty of acting without jurisdiction and criminal acts."

Chief Judge Howard dismissed the misconduct complaint as not cognizable and baseless. A review of the record demonstrated that several days after the case was filed, the magistrate judge granted petitioner's in forma pauperis motion. Two weeks later, petitioner filed an expedited motion for recusal of both the judge and magistrate judge because something "doesn't feel right about their appointments." Shortly thereafter, the magistrate judge denied the request for emergency relief, ruling that the matter would be adequately addressed by the court's preliminary review. The district judge subsequently denied the motion for recusal and issued a comprehensive order addressing each of petitioner's pending motions. Finding the petitioner's claims to be "irrational and [] wholly incredible," the judge ordered petitioner to show cause why the matter should not be dismissed. The judge determined that petitioner's subsequent response provided no facts upon which relief might be granted and dismissed the case.

¹ Rule 3(h) provides:

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 (emphasis added).

Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(B).

Chief Judge Howard dismissed petitioner's primary allegation of judicial delay as not cognizable. "Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural 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)(B). Because the Chief Judge found no evidence of "improper motive" in the handling of petitioner's case or "habitual delay in a significant number of unrelated cases,"² *id.*, and nte. 1, *supra*, he dismissed the allegation of delay as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

Finding that there was no evidence of any judicial impropriety, including *ex parte* communication or conspiracy, Chief Judge Howard also dismissed the complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Last, insofar as the complaint was based on petitioner's disagreement with the substance of the orders issued in the case, Chief Judge Howard dismissed it as directly related to the merits. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B).

In the petition for review, petitioner reiterates the allegation that the district judge improperly delayed in ruling on petitioner's filings.³ Specifically, petitioner alleges that the judge's ruling on the expedited motion to recuse "close to half a year, if not half a year after presenting to [the] judge" equates with "never address[ing the] emergency motion." Petitioner also reiterates the claim that the judge engaged in *ex parte* communication, now based on the

² Petitioner filed one other case in the same district over which a different judge presided.

³ In the petition for review, petitioner challenges the dismissal of the claims against the district judge only; therefore, we do not address petitioner's original claims against the magistrate judge.

observation that the district judge's dismissal order was issued within a week of the dismissal of a case that petitioner had filed in another court.

Petitioner asserts that the judge's rulings in her civil rights case and Chief Judge Howard's dismissal of her misconduct complaint are evidence of disability, under Rule 3(e) of the Rules of Judicial-Conduct, and are motivated by "bias, partiality, non-independent, cruel, hatred [sic]." Petitioner requests that the "entire court" review and reverse Chief Judge Howard's dismissal of the misconduct complaint, that petitioner be awarded "much needed financial relief for damages of all types" and that the judge "be removed from the judiciary."

As an initial matter, pursuant to the statute and governing Rule, petitions for review are considered, in the first instance, by a panel of the Judicial Council. See 28 U.S.C. § 352(d); see also Rules of Judicial-Conduct, Rule 18(a). Moreover, the judicial misconduct complaint procedure does not provide an avenue for affording any of the requested relief, including the reversal of a court order in a pending or closed case, financial compensation or the removal of a judge. See 28 U.S.C. § 351, *et seq.*, and Rules of Judicial-Conduct, Rules 11, 19 and 20.

The petition for review is meritless. It provides no evidence of improper judicial motive or other wrongdoing that would undermine Chief Judge Howard's determinations. As Chief Judge Howard explained, where there is no evidence of bias or judicial animus, claims of judicial delay are not cognizable.⁴ See Rules of Judicial-Conduct, Rule 3(h)(3)(B). Accordingly, Chief Judge Howard appropriately dismissed the misconduct complaint as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

⁴ Although not necessary to the disposition of the matter, the court in fact ruled on petitioner's expedited motions within roughly three months of filing, not six months, as alleged.

Further, petitioner's conclusory allegations that the judge acted with bias, had a disability or engaged in ex parte communication are wholly unsupported. The fact that a court in a different jurisdiction dismissed a case that petitioner had filed at around the same time as the district court dismissed the case at issue does not suggest that the district judge engaged in improper communication. Therefore, Chief Judge Howard appropriately dismissed the complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Likewise, petitioner presents no facts whatsoever supporting the charge that Chief Judge Howard was improperly motivated or disabled when he dismissed petitioner's original complaint. This claim is both frivolous and not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C), Rule 11(c)(1)(B) and 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").

Therefore, the misconduct complaint was appropriately 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), respectively. For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-15-90009 and 01-15-90010 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

1/8/16

Date



Susan Goldberg, Secretary