

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-15-90011

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BEFORE  
Torruella, Thompson and Barron, Circuit Judges  
Casper and Torresen, District Judges

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ORDER

ENTERED: FEBRUARY 25, 2016

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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 a First Circuit district judge.

Petitioner alleged that the judge exhibited bias by issuing improper rulings in a civil case. Chief Judge Howard dismissed the complaint as baseless and not cognizable.

Petitioner originally alleged that the judge violated the Rules of Civil Procedure when the judge allowed the defendant to file a reply to petitioner's response to a motion. Petitioner argued that when the judge granted the motion for leave to file this pleading six days after it was filed and before expiration of the objection period, the judge exhibited bias and prejudice, violated petitioner's Constitutional right to due process, and acted without jurisdiction. Petitioner also asserted that the judge wrongfully denied petitioner's motion for recusal, which was based on the same allegations of wrongdoing. Citing numerous Rules of Civil Procedure, the judicial disqualification statute, 28 U.S.C. § 455, and case law, petitioner concluded that the order

granting leave to file the reply was void and that the judge assisted defense counsel in "committing fraud."

Chief Judge Howard dismissed the misconduct complaint as not cognizable and frivolous. Based on a review of the record, Chief Judge Howard observed that, as alleged, the judge allowed the defendant's motion for leave to file a reply to petitioner's response to a motion six days after the defendant filed the motion for leave. Chief Judge Howard explained that a judge's ruling on a motion before expiration of the objection period does not suggest bias. See Boudin, C.C.J., Amended Order, Complaint No. 406, September 9, 2005, at 2-3.

The Chief Judge found that petitioner offered no evidence to support the allegation that the judge acted with bias or prejudice in issuing any of the rulings in petitioner's case. Rather, Chief Judge Howard determined that petitioner's original complaint was entirely based on petitioner's disagreement with the substance of the judge's orders allowing the defendant leave to respond and denying petitioner's motion for recusal. Explaining that such claims are not cognizable under the judicial misconduct statute, Chief Judge Howard dismissed the complaint as directly related to the merits and as baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), respectively. See also Rules for Judicial-Conduct and Judicial Disability Proceedings (Rules for Judicial-Conduct), Rules 11(c)(1)(B), 11(c)(1)(C) and 3(h)(3)(A).

In the petition for review, petitioner repeats her allegations objecting to the judge's orders granting the defendant leave to file a reply and denying petitioner's motion for the judge's recusal. Specifically, petitioner asserts that the judge violated the Federal Rules of Civil Procedure and petitioner's Constitutional right to due process, acted with prejudice against petitioner and engaged in fraud when the judge allowed the motion for leave before the objection period lapsed. Petitioner further alleges that the judge's "quick decision" regarding the

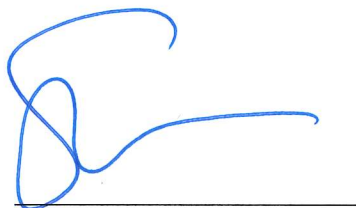
defendant's pleading "shows collusion" and asserts that the judge "knowingly and willingly acted in concert with the adverse party to violate [petitioner's] due process rights." Petitioner also contends that the judge's denial of petitioner's motion to recuse was itself based on bias and prejudice, in violation of 28 U.S.C. §§ 144 and 455, and contests Chief Judge Howard's determination that the original complaint was based on a disagreement with the judge's decisions.

The petition for review is meritless. Petitioner provides no evidence of improper judicial motive or other wrongdoing to refute the Chief Judge's determinations. Petitioner's conclusions that the judge colluded with the defendant and acted with bias derive only from the substance of the court's orders allowing the defendant to file the reply prior to expiration of the objection period and denying the motion for recusal. As Chief Judge Howard explained, these rulings do not suggest bias or wrongdoing. Therefore, Chief Judge Howard appropriately dismissed the complaint as not cognizable and as frivolous. See 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 No. 01-15-90011 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

2/25/16

Date



Susan Goldberg, Secretary