

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-15-90026

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

ORDER

ENTERED: SEPTEMBER 1, 2016

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Petitioner alleged that the judge was biased and wrongfully denied petitioner's motion. Chief Judge Howard dismissed the complaint as baseless and not cognizable.

Petitioner originally alleged that the judge was biased against petitioner because he appeared pro se and that the judge wrongfully denied petitioner's motion to seal the record of his criminal case. Petitioner, who had been convicted and sentenced in another country, filed the motion after he had been transferred to the district where he had completed a term of supervised release. Petitioner alleged that by wrongfully denying the motion to seal his criminal case file without a hearing and in a public order, the judge violated petitioner's right to due process and exhibited bias. Petitioner identified purported factual errors in the judge's memorandum and order and asserted that, because petitioner appeared pro se, the judge intentionally publicized the

"non-factual decision" on the "world wide web" in order to falsely and publically ruin petitioner's reputation and ability to obtain employment.

Chief Judge Howard dismissed the complaint as baseless and not cognizable. The Chief Judge determined that neither the complaint nor the reviewed record provided any information suggesting that the judge was biased or improperly motivated in denying petitioner's motion to seal. The Chief Judge observed that there is no legal or ethical entitlement to a hearing on a motion to seal and that petitioner's complaint was based exclusively on his disagreement with the substance of the judge's ruling. Accordingly, Chief Judge Howard dismissed the complaint as not cognizable and as unfounded. See 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(B) and 11(c)(1)(D).

In his petition for review, petitioner asserts that Chief Judge Howard was biased when he dismissed petitioner's complaint and that the Chief Judge should have recused from reviewing the complaint because he had "arbitrarily denied" a petition for writ of mandamus and another request that petitioner had filed in the Court of Appeals.¹ Petitioner also repeats the allegations that the district court was biased when it denied petitioner's motion to seal without a hearing, and "irresponsible and negligent" when it included purported factual errors in the order denying the motion. Petitioner reiterates that the judge's prejudicial decision has harmed petitioner's employment prospects and that the judge's conduct violated the Double Jeopardy Clause. Petitioner adds for the first time that the judge delayed in acting on the motion to seal. Finally,

¹ Petitioner also alleges that other Court of Appeals judges were biased against petitioner in ruling on certain of his appellate filings. As the original complaint was not directed against these judges, these claims are not at issue in the present matter.

petitioner requests that review of his petition be transferred to another jurisdiction and that the Court of Appeals enjoin the uploading of the district judge's order denying petitioner's motion to seal.

The petition for review is meritless. First, the judicial misconduct complaint process does not provide an avenue for obtaining an order in a case, including the injunctive relief petitioner requests. See 28 U.S.C. § 351, *et seq.*, and Rules of Judicial-Conduct, Rules 11, 19 and 20. Moreover, petitioner provides no basis for his claims that Chief Judge Howard was biased or should have been disqualified from reviewing the misconduct complaint. These assertions amount to nothing more than a challenge to the correctness of the Chief Judge's order dismissing the misconduct complaint and, therefore, are not cognizable. See Rules of Judicial-Conduct, Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge without more is merits-related Thus, a [claim] challenging the correctness of a chief judge's determination to dismiss a [] misconduct complaint would be properly dismissed as merits-related."). Nor does the Chief Judge's involvement in petitioner's underlying case merit his disqualification from the misconduct matter. See Rules of Judicial-Conduct, Rule 25. Likewise, there are no "exceptional circumstances" that would warrant transfer of this proceeding to another jurisdiction. See id. Rule 26.

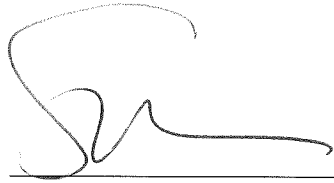
As to the original complaint, petitioner offers no information that would undermine Chief Judge Howard's determinations. As Chief Judge Howard explained, the district court was not required to conduct a hearing on petitioner's motion to seal and the judge issued a comprehensive memorandum and order, recounting the chronology of petitioner's case and denying the motion on a number of grounds. Petitioner's objection to this ruling does not indicate bias on the part of the judge. Nor does petitioner's newfound claim that the judge was delayed in ruling on the

matter suggest cognizable misconduct. See Rules of Judicial-Conduct, Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge – in other words, assigning a low priority to deciding a particular case."). Accordingly, the misconduct complaint was appropriately dismissed as not cognizable and as unfounded. 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)(D).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-15-90026 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

9/1/10

Date

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

Susan Goldberg, Secretary