

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90009

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

ORDER

ENTERED: NOVEMBER 29, 2016

Petitioner, an incarcerated 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 magistrate judge. Petitioner alleged that the magistrate judge was biased and wrongfully dismissed his petition for a writ of habeas corpus. Chief Judge Howard dismissed the complaint as baseless and not cognizable.

In the original complaint, petitioner alleged that the magistrate judge was biased in favor of respondent, a prison warden, and as a result, wrongfully denied petitioner's motion for leave to restyle his petition for a writ of habeas corpus as a civil rights claim against federal officials. Petitioner further alleged that the magistrate judge engaged in an "egregious dereliction of duty" by dismissing the petition without "ruling on the merits

of [petitioner's] argument." Petitioner requested that no new cases be assigned to the magistrate judge for six months and that another judge be assigned to petitioner's case.¹

Chief Judge Howard explained that the judicial misconduct complaint procedure does not provide an avenue for obtaining an order in a pending or closed case, including the recusal of a judge, or the reassignment of a case. 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 the misconduct complaint as baseless and not cognizable. Chief Judge Howard reviewed the record and observed that, in denying petitioner's motion to amend his petition and dismissing his case, the magistrate judge outlined the differences between a habeas petition and a civil rights complaint and provided instructions for bringing a civil complaint.² Because there was no support for petitioner's allegations of judicial bias, "dereliction of duty" or other wrongdoing, 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). As the complaint derived exclusively from petitioner's disagreement with the substance of the court's rulings, the Chief Judge dismissed it as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to

¹ Petitioner included allegations against clerk's office staff, which the Chief Judge dismissed as not cognizable under the judicial misconduct statute. See 28 U.S.C. § 351, *et seq.*

² Petitioner had consented to jurisdiction by a magistrate judge.

the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related.").

In the petition for review, petitioner asserts that Chief Judge Howard was biased when he dismissed petitioner's misconduct complaint in order to protect the magistrate judge. Petitioner reiterates the claim that the magistrate judge was biased against petitioner when he "arbitrarily and capriciously" denied petitioner's motion to restyle his habeas petition as a civil rights action and dismissed petitioner's case.

The petition for review is meritless. Petitioner provides no basis for his claim that Chief Judge Howard was biased in his review of the misconduct complaint. This assertion amounts to nothing more than a challenge to the correctness of the Chief Judge's order of dismissal and, therefore, is 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.").

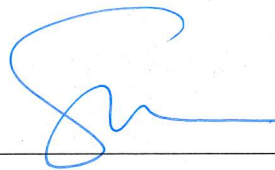
With respect to the original misconduct complaint, petitioner offers no information that would undermine Chief Judge Howard's determinations. As Chief Judge Howard observed, there is no evidence that the magistrate judge was improperly motivated in ruling on complainant's petition. As the allegations are simply challenges to the substance of the court's rulings, the misconduct complaint was appropriately dismissed as

not cognizable and as baseless. See 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. 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. 01-16-90009 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

11/29/16

Date



Susan Goldberg, Secretary