

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT No. 01-16-90025

BEFORE
Lynch, Thompson, and Barron, Circuit Judges
Casper and Delgado-Hernández, District Judges

ORDER

ENTERED: JUNE 7, 2017

Petitioner, a pro se litigant, has filed a petition for review of Judge Torruella's order dismissing her complaint, under 28 U.S.C. § 351(a), against a First Circuit appellate judge. Petitioner alleged that the appellate judge improperly dismissed a previous misconduct complaint that petitioner had filed against a district judge who presided over her civil rights case. Petitioner further alleged that the appellate judge was biased against petitioner in connection with the appeal of petitioner's underlying case. Judge Torruella dismissed the complaint as frivolous and not cognizable.

In the original complaint, petitioner alleged that the appellate judge wrongfully dismissed her first misconduct complaint in order to protect the district judge. Petitioner further alleged that the appellate judge was biased in favor of defendants/appellees in the

appeal of petitioner's case and improperly delayed the adjudication of the appeal.

Petitioner also requested "financial restitution."

In dismissing the misconduct complaint, Judge Torruella first explained that the judicial misconduct procedure does not provide an avenue for affording financial relief. See 28 U.S.C. § 351, *et seq.*, and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial-Conduct), Rules 11, 19, and 20. Because petitioner provided no facts indicating that the appellate judge was biased in reviewing petitioner's first misconduct complaint, Judge Torruella dismissed the allegation 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), and Rules for Judicial-Conduct, Rule 3 Commentary ("[A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint [without more is] properly dismissed as merits-related . . .").

With respect to petitioner's appeal, Judge Torruella observed that court records demonstrated that the matter was not referred to the appellate judge who was the subject of the complaint. Accordingly, Judge Torruella dismissed petitioner's allegations that the judge was biased against petitioner and disregarded the appeal as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii); see also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Finally, Judge Torruella dismissed petitioner's assertion that the judge was responsible for alleged delays in the appeal as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B); see also Rules for Judicial-Conduct, Rule

3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling.").

In the petition for review, petitioner recounts the claims that formed the basis of her underlying civil rights case and levies incoherent and generalized allegations of misconduct against "every judge that dismissed and is guilty of delaying" the proceeding. Petitioner reiterates the allegations that the appellate judge wrongfully dismissed her first misconduct complaint and has delayed her appeal. Petitioner also appears to repeat the allegation from her first misconduct complaint that the district judge improperly delayed in ruling on petitioner's civil rights case. Finally, petitioner contends that Judge Torruella wrongfully dismissed her misconduct complaint against the appellate judge and requests that the involved judges be removed from office.

As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for obtaining the removal of judges where, as here, the complaint did not warrant the appointment of a special committee. See 28 U.S.C. § 351 *et seq.*, and Rules for Judicial-Conduct, Rules 11, 19, and 20.

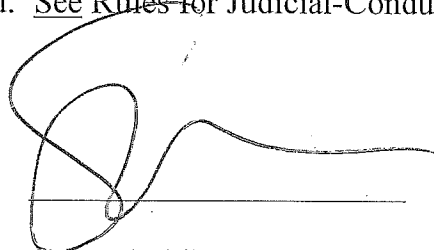
Moreover, the petition for review is meritless and is simply another attempt to reassert petitioner's disagreement with the dismissal of her underlying case. Petitioner provides no facts to support the allegations that the appellate judge or Judge Torruella were improperly motivated in reviewing her misconduct complaints or that the appellate judge played any role in petitioner's appeal, let alone an improper one. Petitioner's

restated claims of improper delay in both the underlying case and on appeal were appropriately dismissed as not cognizable. See Rules for Judicial Conduct, Rule 3(h)(3)(B) ("Cognizable misconduct . . . does not include . . . an allegation about delay in rendering a decision or procedural ruling."). Accordingly, the misconduct complaint was properly dismissed as not cognizable and as frivolous, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules for 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. 01-16-90025 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

6/7/2017

Date



Susan Goldberg, Secretary