

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90029 and 01-16-90030

BEFORE

Lynch and Kayatta, Circuit Judges
Laplante, Casper, and McConnell, District Judges

ORDER

ENTERED: SEPTEMBER 5, 2017

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 and magistrate judge. Petitioner alleges judicial misconduct in connection with multiple civil proceedings over which the district judge and magistrate judge presided. Chief Judge Howard dismissed the misconduct complaint as baseless and not cognizable.

Petitioner originally alleged that the district judge and the magistrate judge engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts by failing to follow the rules of civil procedure and the Code of Conduct for United States Judges (Code of Conduct) while presiding over petitioner's civil cases. She further asserted that the judges' misconduct might be the result of "a

mental disability." Petitioner also contended that the magistrate judge wrongfully failed to recuse sua sponte from petitioner's proceedings¹ based on a conflict of interest stemming from involvement as a state court judge in an unrelated criminal prosecution of petitioner. Petitioner further alleged that the district judge improperly denied petitioner's request for court-appointed counsel and remanded the case to state court. Finally, petitioner concluded that the judges were biased against her as a pro se litigant and "effectively joined [the state court judges'] conspiracy to deprive [petitioner] of due process and equal protection[.]"

In his order dismissing the misconduct complaint, Chief Judge Howard determined that the record contained no information suggesting that the district judge or the magistrate judge acted improperly. Chief Judge Howard observed that the reviewed record indicated that petitioner had filed claims against state court judges alleging constitutional violations related to adverse outcomes in several state court proceedings concerning petitioner's property rights. The Chief Judge noted that the magistrate judge granted petitioner's motion to proceed in forma pauperis (IFP) and denied, without prejudice, petitioner's motion to amend her complaint. Chief Judge Howard further observed that, while the complaint and available records did not indicate that the magistrate judge had been involved in petitioner's state court prosecution, any such involvement would not alone demonstrate a conflict of interest. Chief Judge Howard also

¹ Petitioner did not file a motion to recuse or disqualify the magistrate judge in any of the underlying federal cases.

observed that the district judge denied petitioner's motion for appointment of counsel and dismissed her substantive claims in a comprehensive memorandum and order which explained the legal deficiencies of the claims. Finally, the Chief Judge noted that the district judge dismissed petitioner's other cases for lack of jurisdiction and improper removal.²

Because petitioner's conclusory allegations of judicial bias, conflict of interest, disability, and other wrongdoing were presented without any supporting evidence, Chief Judge Howard dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D). Chief Judge Howard further explained that the original complaint was based entirely on petitioner's disagreement with the substance of multiple court rulings. Accordingly, Chief Judge Howard dismissed the complaint as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to 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.").

² After dismissal of the misconduct complaint, petitioner moved to vacate the orders of dismissal in two underlying cases. When the district judge recused sua sponte, the cases were reassigned to another district judge who denied petitioner's motions as meritless and determined that petitioner had "become an abusive litigant." The dismissals of petitioner's substantive claims were summarily affirmed on appeal.

In the petition for review, petitioner asserts that Chief Judge Howard failed to adequately review her misconduct complaint. Petitioner renews her allegation that the district judge and magistrate judge have "shield[ed] state judges from being held accountable." Petitioner also claims that, because the magistrate judge presided over portions of a state criminal prosecution against petitioner and participated in unspecified "extrajudicial government activities" that displaced petitioner from her residence, the magistrate judge had "personal knowledge [of] disputed evidentiary facts" that necessitated his recusal from the federal proceedings. Petitioner provides for the first time a copy of an apparent criminal state court docket referencing proceedings over which the magistrate judge presided while a state court judge.³ Petitioner further alleges that the district judge improperly delayed ruling on a motion to transfer and issued a "void order" against petitioner.

The petition for review is meritless. The complaint and record available to Chief Judge Howard provided no evidence of improper judicial motive, bias, conflict of interest, disability, or other wrongdoing by either judge. Petitioner offers no facts in the petition for review that undermine Chief Judge Howard's determinations.

As the Chief Judge determined, the magistrate judge issued a number of rulings in petitioner's primary case, including granting petitioner's motion to proceed IFP and

³ The docket pertains to criminal proceedings related to motor vehicle offense charges against petitioner in state court that were resolved by a plea agreement several years ago. According to the docket, the magistrate judge was one of seven state court judges that presided over these proceedings; the magistrate judge ruled on several motions over a period of approximately 14 months.

denying, without prejudice, a motion to amend the complaint. The magistrate judge also granted petitioner's several other IFP motions, issued multiple reports and recommendations (advising remand of petitioner's complaints to state court because of lack of jurisdiction and dismissal for failure to state a claim), and granted petitioner's multiple motions to amend her complaints. Petitioner's recent submission suggesting that the magistrate judge ruled on several motions in an unrelated state court criminal prosecution several years ago does not alone evidence a violation of the Code of Conduct, much less judicial misconduct.⁴ Nor is there any information suggesting that the magistrate judge was involved in the alleged property dispute that was at issue in her cases. Accordingly, Chief Judge Howard appropriately 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).

Where, as here, there is no evidence of improper judicial motive, petitioner's objections to the magistrate judge's and the district judge's rulings, as well as to Chief Judge Howard's order dismissing the misconduct complaint, are not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("An allegation that calls into question the

⁴ "Facts of a proceeding solely obtained by a judge in his or her judicial capacity are not personal knowledge resulting in disqualification under Canon 3(C)(1)(a)." Committee on Codes of Conduct, Compendium of Selected Opinions § 3.6-8(f). See also id. § 3.3-3(j) ("[R]ecusal is not required when a prisoner whose conviction or sentence the judge adjudicated as a state court judge files an unrelated claim in federal court."). Moreover, even if the magistrate judge violated the Code of Conduct by failing to recuse (of which there is no evidence), this alone would not demonstrate misconduct. See Rules of Judicial-Conduct, Commentary on Rule 3 ("Although the Code of Conduct . . . may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather than a set of disciplinary rules."), and Code of Conduct, Canon 1 Commentary (While the Code of Conduct "may also provide standards of conduct for application in proceedings under the . . . Judicial Conduct and Disability Act [,] . . . [n]ot every violation of the Code should lead to disciplinary action.").

correctness of a judge's ruling, including a failure to recuse, without more, is merits-related."), and Commentary on Rule 3 ("[A claim] challenging the correctness of a chief judge's determination to dismiss a . . . misconduct complaint would be properly dismissed as merits-related."). The same is true for petitioner's allegations that the district judge wrongly delayed adjudication of petitioner's case. See Rules of Judicial-Conduct, Rule 3(h)(3)(B) ("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."); see also id., Commentary on Rule 3 ("With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related."). Accordingly, the complaint was properly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-16-90029 and 01-16-90030 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

9/5/17

Date



Susan Goldberg, Secretary