

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90033

BEFORE
Torruella and Kayatta, Circuit Judges
Laplante, McConnell, and Levy, District Judges

ORDER

ENTERED: AUGUST 3, 2017

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 against him while presiding over his civil case. Chief Judge Howard dismissed the complaint as baseless and not cognizable.

In the original complaint, petitioner asserted that the judge was disqualified from presiding over his case because of the judge's former employment. Petitioner alleged that the judge wrongfully denied a number of petitioner's motions and that the judge's denial of his first motion to recuse demonstrated that the judge either did not read the motion, suffered from "mental illness," or acted out of prejudice against petitioner. Petitioner requested that the judge recuse from the case, that he be afforded a hearing before a

different judge, and that the Judicial Council assist petitioner with settling the underlying litigation.

In dismissing the misconduct complaint, Chief Judge Howard first explained that the judicial misconduct procedure does not provide an avenue for obtaining an order in a pending or closed 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 petitioner's allegations of conflict of interest, bias, and disability as baseless. The Chief Judge observed that, in addition to filing a civil complaint, petitioner filed a motion to proceed in forma pauperis (IFP), a motion for appointment of counsel, and motions for injunctive relief. In a memorandum and order, the judge denied the requests for injunctive relief for failure to show a likelihood of success on the merits, and denied the IFP motion and motion for appointment of counsel, without prejudice.

Chief Judge Howard further observed that the judge issued a number of other rulings in which the court consistently provided thorough explanations for its determinations. These included allowing petitioner's requests for extensions of time and several defendants' motions to dismiss, and denying petitioner's repeated requests for appointment of counsel, to amend his complaint, and for injunctive relief.

Shortly thereafter, petitioner filed his first motion for recusal, which the judge denied because petitioner failed to meet the statutory requirements. Subsequently,

petitioner filed numerous additional requests to disqualify the judge, for appointment of counsel, and for injunctive relief, each of which the judge denied.

Chief Judge Howard explained that the misconduct complaint and reviewed record contained no information to support the allegations of bias, disability, or other wrongdoing in connection with the judge's handling of petitioner's case. The Chief Judge further determined that the judge's former employment did not demonstrate a conflict of interest, require disqualification, or evidence misconduct. See Code of Conduct for United States Judges, Canon 3(C)(1). Therefore, Chief Judge Howard 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).

Because there was no evidence of improper judicial motive, Chief Judge Howard also dismissed petitioner's objections to the court's rulings as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and 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.").

In the petition for review, petitioner repeats his allegations that the judge was biased and should have recused from petitioner's case, and that the court's rulings indicate that the judge either failed to read petitioner's motions, suffers from "mental illness," or acted out of prejudice. Petitioner suggests that the judge was improperly motivated to

protect the interests of financial institutions and the senator who allegedly recommended the judge for nomination, and to harm petitioner based on his pro se status. Petitioner further alleges that the judge's rulings, some of which have issued since the dismissal of the original misconduct complaint, amount to fraud upon the court, treason, and due process violations.¹ Petitioner further alleges that all of the court's rulings are void because the judge is disqualified. Petitioner adds that the judge wrongly delayed petitioner's case.

Petitioner also alleges that Chief Judge Howard's dismissal of his misconduct complaint "play[ed] a role in an unnecessary judicial delay" and asserts that the Chief Judge either did not read the complaint, suffers from "mental illness," or acted out of favoritism.

Petitioner concludes by requesting various relief, including the removal and replacement of the district judge, a criminal investigation, and the First Circuit Judicial Council's assistance with settling petitioner's underlying case. Petitioner asks for an evidentiary hearing before the subject judge so that the judge "can address and clarify for the record each of [petitioner's] allegations"

As an initial matter, the judicial misconduct procedure does not provide an avenue for affording relief in a pending or closed case, including assistance with litigation, or the

¹ The rulings to which petitioner objects include the judge's failure to recuse, dismissal of the case, denial of petitioner's requests for bill of costs, and grant of petitioner's motion for leave to appeal IFP (while declining to determine whether the appeal was made in good faith).

removal of a judge where, as here, the complaint did not warrant the appointment of a special committee. See 28 U.S.C. § 351, *et seq.*, and Rules of Judicial-Conduct, Rules 11, 19, and 20. *Cf.*, Rules of Judicial-Conduct, Rule 20(b)(2) (providing for referral of a misconduct complaint to the Judicial Conference where, after the appointment of a special committee, a judicial council "determines that a . . . judge may have engaged in conduct that . . . might constitute ground for impeachment.").

Moreover, the petition for review is meritless and offers no information that would undermine Chief Judge Howard's determinations, let alone suggest that the Chief Judge was biased or disabled in connection with his review of the complaint. See Commentary to Rules of Judicial-Conduct, Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related").

There is no evidence in the reviewed record to support petitioner's claims of bias, conflict of interest, disability, or other wrongdoing by the district judge. The court's rulings, including those issued since dismissal of the original misconduct complaint, see n. 1, *supra*, supply reasons for each of the court's determinations. Further, neither the judge's former employment, a senator's purported recommendation of the judge, nor any other available information demonstrates a conflict of interest, requires the judge's disqualification, or evidences misconduct. See Code of Conduct for United States

Judges, Canon 3(C)(1). Therefore, the complaint was properly dismissed as baseless.

See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Because petitioner failed to present any evidence of improper judicial motive, his objections to the judge's orders in his case were properly dismissed as not cognizable.

See 28 U.S.C. § 352(b)(1)(A)(ii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

The same is true for petitioner's allegations that the district judge and Chief Judge Howard 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.").

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-16-90033 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

8/3/2017

Date



Susan Goldberg, Secretary