

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT No. 01-17-90003

BEFORE

Torruella, Thompson, and Barron, Circuit Judges
McConnell and Delgado-Hernández, District Judges

ORDER

ENTERED: FEBRUARY 2, 2018

Petitioner 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 alleges judicial misconduct in connection with the judge's ruling on a request to extend a temporary restraining order (TRO). Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

Petitioner originally alleged that the judge acted with bias in denying a request to extend a TRO issued in a civil proceeding. Petitioner was not a party to the underlying case, nor does he indicate that he has any relationship with any of the plaintiffs.

Petitioner also asserted that the judge acted "angrily" during the hearing on the request to extend the TRO.

In his order dismissing the complaint, Chief Judge Howard determined that the record contained no information suggesting that the judge was biased or otherwise acted improperly. Chief Judge Howard observed that the reviewed record -- including the misconduct complaint, the court's docket, the hearing transcript, and the judge's memorandum and order -- indicated that, both before and during the relevant hearing, the court provided all parties with opportunity to present their claims. Chief Judge Howard also observed that the transcript of the hearing provided no support for petitioner's claim that the subject judge was hostile or otherwise spoke improperly. See, e.g., Lynch, C.C.J., Order, *In re Judicial Misconduct Complaint No. 01-12-90015*, July 11, 2012, at 6, quoting *In Re: Jane Doe*, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011). Finally, the Chief Judge noted that the lengthy memorandum and order objectively applied the relevant standard to each of the claims.

Because petitioner's conclusory allegations of judicial bias 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). Insofar as petitioner's claims were based exclusively on his disagreement with the district judge's order denying the TRO extension, 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).

In the petition for review, petitioner reiterates his allegation that the judge was biased and acted "angrily" during the hearing on the request to extend the TRO. Petitioner further contends that Chief Judge Howard "insult[ed]" petitioner in the order of dismissal by using statements like "baseless and not cognizable." He alleges that the judiciary is "political" and "corrupt," and that both Judge Gorton and Chief Judge Howard are politically motivated.

The petition for review is meritless. Petitioner offers no facts in the petition for review that undermine Chief Judge Howard's determinations with respect to the underlying complaint. As the Chief Judge concluded, neither the misconduct complaint nor the reviewed record offered any indication that the judge was biased or hostile in reviewing the TRO issued in the case. Petitioner likewise fails to offer any support for the general claims that the subject judge or Chief Judge Howard are politically motivated or otherwise acted improperly. Accordingly, Chief Judge Howard appropriately dismissed the complaint as baseless and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rule 11(c)(1)(D), 11(c)(1)(B), and Commentary to Rule 3 ("[A claim] challenging the correctness of a chief judge's determination to dismiss a misconduct complaint [is] properly dismissed as merits-related.").

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-17-90003 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

2/2/18
Date



Susan Goldberg, Secretary