

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-17-90007

BEFORE

Lynch and Kayatta, Circuit Judges
Laplante, Hillman, and Levy, District Judges

ORDER

ENTERED: OCTOBER 12, 2018

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 judicial misconduct in connection with two civil matters that petitioner had filed against multiple federal agents and the federal government. Chief Judge Howard dismissed the misconduct complaint as baseless and as not cognizable.

In the original complaint, petitioner alleged that, as a result of unspecified familial relationships, the judge was biased against petitioner and that the judge treated petitioner improperly during a scheduling conference in his first case. Petitioner also alleged that the judge's dismissal of this case without ruling on petitioner's motion for a preliminary injunction constituted a federal crime. Petitioner further asserted that the judge violated

the Code of Conduct for United States Judges by denying petitioner's motion for recusal in his second case.

In dismissing the misconduct complaint, Chief Judge Howard determined that the record -- including the misconduct complaint, the district court's dockets, and the transcript of the scheduling conference held in the first case -- contained no information suggesting that the judge was biased (either because of any personal relationships or for any other reason), or otherwise acted improperly. As to the first case, Chief Judge Howard observed that the transcript of the scheduling conference demonstrated that the judge heard from both parties, and inquired about the case's procedural posture, as well as the nature of petitioner's claims and petitioner's experience with the courts. The judge also repeatedly advised petitioner that he would need to respond to any motion to dismiss. Chief Judge Howard further observed that, since the judge dismissed the case when petitioner failed to oppose the defendants' motion to dismiss, the court did not rule on petitioner's motion for a preliminary injunction.

As to the second case, Chief Judge Howard observed that petitioner moved for the judge's recusal alleging that the judge was biased while presiding over petitioner's first case; the judge denied the motion. Chief Judge Howard further observed that the judge issued a well-reasoned order, granting defendants' unopposed motion to dismiss this case, but denying their request to enjoin petitioner from filing further actions without prior court approval; instead, the judge warned petitioner in the order that he could be subject to sanctions for future vexatious or frivolous filings.

Because petitioner's conclusory allegations of judicial bias, improper treatment of petitioner, 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 (Rules of Judicial-Conduct), Rule 11(c)(1)(D). Insofar as petitioner's claims were based exclusively on petitioner's objections to the court's orders, including the denial of petitioner's motion for recusal and the dismissal of both cases, Chief Judge Howard dismissed the complaint 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, including a failure to recuse, without more, is merits-related."). Finally, Chief Judge Howard dismissed petitioner's claim arising from the absence of a ruling on petitioner's motion for preliminary injunction as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

In the petition for review, petitioner claims that Chief Judge Howard erroneously dismissed the misconduct complaint. Petitioner alleges that the "harassment and stalking" that he had previously reported to the federal government has continued since the dismissal of his misconduct complaint and includes documents that he received from federal agencies. Petitioner suggests that these documents corroborate the claims presented in his underlying litigation and undermine the "credibility" of Chief Judge

Howard's investigation of the misconduct complaint that petitioner filed against the judge. Petitioner further alleges impropriety in the docketing of pleadings, as well as wrongdoing by the United States Attorney and court staff. Petitioner requests unspecified relief under various international, federal, and state laws.

As an initial matter, the judicial misconduct procedure does not provide an avenue for filing a complaint against judicial staff or the United States Attorney. Nor does it afford petitioner's requested relief. See 28 U.S.C. § 351, *et seq.*; see also Rules of Judicial-Conduct, Rules 11, 19, and 20.

The petition for review is meritless. Petitioner's disjointed claims of wrongdoing by multiple parties, as well as the materials he submits with the petition, contain no information that undermines the Chief Judge's determinations with respect to the underlying complaint or suggest that his review of the complaint was in any way inadequate or improper. 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 . . .").

Based on a thorough review of the record, Chief Judge Howard correctly determined that the misconduct complaint was baseless and, as it derived exclusively from petitioner's disagreement with the court's orders, not cognizable. See Rules for Judicial-Conduct, Rule 3(h)(3)(A). Chief Judge Howard also correctly determined that

the judge's dismissal of petitioner's first case without ruling on his motion for preliminary injunction was not indicative of misconduct. Accordingly, Chief Judge Howard appropriately dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-17-90007 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

10/12/2018
Date


Susan Goldberg, Secretary