

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-17-90019 - 01-17-90020

BEFORE

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

ORDER

ENTERED: OCTOBER 29, 2018

Petitioner, a pro se criminal defendant, 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 and a First Circuit Court of Appeals judge. Petitioner alleged that the district judge engaged in judicial misconduct in connection with a criminal matter over which the judge presided, and that the circuit judge engaged in judicial misconduct in connection with the appeal of the criminal case and a related mandamus proceeding. Chief Judge Howard dismissed the complaint as baseless, as not cognizable, and as not indicative of misconduct.¹

¹ This is petitioner's second misconduct complaint. In his first misconduct complaint, petitioner lodged the same allegations against the same district judge. The complaint was dismissed as baseless and as not cognizable, and the Judicial Council of the First Circuit affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Complaint

Petitioner originally alleged that the district judge was biased against petitioner because of his pro se status and that, as a result, the judge delayed in ruling on a motion filed by petitioner, failed to review the relevant facts, and ultimately wrongfully denied the motion. In addition, petitioner alleged that the district judge wrongfully allowed information about petitioner to be posted in a public database and that the court belatedly docketed his filings. Petitioner further alleged that the district judge harassed petitioner and improperly directed a U.S. Marshal to confront petitioner.

Petitioner alleged that the circuit judge was also biased against petitioner because of his pro se status, wrongfully denied petitioner's motions in the appeal and the mandamus proceeding, and improperly referenced petitioner's alias in court orders. Petitioner further alleged that the subject judges colluded in an effort to protect each other, and petitioner requested an investigation into the judges' communications during the pendency of the appeal.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct procedure does not provide an avenue for obtaining relief in a case, including the removal or expungement of a judge's order or the sealing of a 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.

No. 01-15-90026, March 11, 2016; and Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-15-90026, September 1, 2016.

Chief Judge Howard then determined that the record contained no evidence supporting petitioner's conclusory allegations of judicial wrongdoing. Chief Judge Howard observed that petitioner, who transferred from a foreign country to serve the remainder of his criminal sentence in the United States, filed a motion seeking, inter alia, that the court seal his criminal case. The district judge denied the motion in a detailed memorandum and order, explaining that the common law presumption of public access to court records outweighed any potential harm to petitioner.

Chief Judge Howard further observed that, on appeal, the circuit judge denied petitioner's emergency motion to seal, and petitioner then voluntarily dismissed the appeal. In the separate mandamus proceeding, the circuit judge denied petitioner's motion to seal, and the mandamus petition was denied by a panel of three other circuit judges.

Chief Judge Howard observed that the misconduct complaint offered no new facts in support of the allegations that the district judge was biased - the same claim that petitioner had raised in his first misconduct complaint and that was dismissed as baseless and as not cognizable. *See supra*, n.1. The Chief Judge further observed that petitioner offered no support for the allegations that the district judge harassed petitioner, improperly directed security personnel to confront petitioner, or intentionally made information about petitioner available to a database. Chief Judge Howard also determined that petitioner failed to provide any evidence that the circuit judge was biased in handling petitioner's appeal or mandamus proceeding, or that the subject judges were

engaged in a conspiracy. Accordingly, Chief Judge Howard dismissed the misconduct 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). Insofar as petitioner's claims were based exclusively on petitioner's objections to the courts' orders, including the denial of petitioner's motions to seal, 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).

Chief Judge Howard further observed that petitioner's allegation that the district judge communicated with the U.S. Marshals about petitioner would not constitute misconduct. See Howard, C.C.J., Order, In Re: Complaint No. 01-15-90012, October 7, 2015, at 4 (citing Boudin, C.C.J., Order, In Re: Complaint No. 429, June 12, 2006, at 4) (explaining that a judge may exercise reasonable discretion over the courthouse environment to maintain security). Likewise, petitioner's claim of docketing delay, even if substantiated, would not be attributable to the presiding judge or indicative of misconduct. See, e.g., Howard, C.C.J., Order, In Re: Complaint Nos. 01-16-90026, 01-16-90032, November 14, 2016, at 9 (citing Lynch, C.C.J., Order, In Re: Complaint No. 01-13-90015, December 18, 2013, at 3-4). Accordingly, Chief Judge Howard dismissed the complaint 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 reiterates his allegations of bias and misconduct by the subject judges. Petitioner repeats the allegations that the district judge's order denying petitioner's motion to seal was erroneous, that the district judge

harassed petitioner and asked a U.S. Marshal to confront petitioner in an effort to intimidate him, and that the court delayed in docketing filings. Petitioner realleges that the circuit judge wrongfully denied petitioner's motions to seal and again asks that his case be sealed.

The petition for review is meritless and is simply another attempt to reassert petitioner's disagreement with the courts' orders. Petitioner offers no new facts in the petition for review that undermine Chief Judge Howard's dismissal of the underlying complaint. As the Chief Judge concluded, neither the misconduct complaint nor the reviewed record offers any indication that the subject judges engaged in judicial misconduct. Chief Judge Howard appropriately determined that the allegations in the complaint derive exclusively from petitioner's disagreement with the courts' orders and that such claims do not constitute cognizable misconduct. See Rules for Judicial-Conduct, Rule 3(h)(3)(A). Finally, as Chief Judge Howard concluded, petitioner's allegations concerning the district judge's purported communications with the U.S. Marshals and the court's alleged docketing delay did not suggest misconduct. Accordingly, Chief Judge Howard appropriately dismissed the complaint as baseless, as not cognizable, and as not indicative of misconduct, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii), 352(b)(1)(A)(ii), and 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D), 11(c)(1)(B), and 11(c)(1)(A), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-17-90019 and 01-16-90020 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1). In addition, petitioner is also advised that further attempts to use the judicial misconduct process to challenge judicial rulings that have been both fully and finally terminated and the subject of previous unsuccessful misconduct complaints will precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct.

October 29, 2018
Date



Susan Goldberg, Secretary