

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-18-90001

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BEFORE

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

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ORDER

ENTERED: FEBRUARY 1, 2019

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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 misconduct in connection with three (3) civil matters over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

In the original complaint, petitioner alleged that the judge exhibited bias against him and in favor of the public officials petitioner had sued, by "ignoring" a number of petitioner's motions, including, but not limited to, motions for recusal. He further alleged that the judge: incorrectly decided multiple motions to dismiss and for recusal; improperly denied petitioner's requests for a hearing on a motion to dismiss; "habitually

delayed" in issuing rulings in petitioner's cases; failed to address motions to intervene; and improperly caused one (1) of petitioner's cases to be reassigned to the subject judge. Finally, petitioner asserted that, by presiding over all of petitioner's cases, the judge "abus[ed the] power of [the] office [by] judicially stalk[ing] and harass[ing petitioner]."

Petitioner requested that the judge be sanctioned and sought an order disqualifying the judge from petitioner's third case and any future cases filed by petitioner.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct process does not provide an avenue for affording petitioner's requested relief, including reconsideration of a judge's denial of a motion to recuse or an order disqualifying a judge from a case. See 28 U.S.C. § 351, *et seq.*; see also 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 bias and other misconduct as baseless. The Chief Judge observed that petitioner filed a pro se civil lawsuit against state officials, which was assigned to the subject judge. Petitioner then filed numerous motions, all of which the subject judge denied, seeking, among other things: entries of default, imposition of sanctions and findings of contempt against defendants and their counsel, and an order requiring defendants to include affidavits with

their pleadings. The subject judge dismissed the case for failure to state a claim upon which relief can be granted.<sup>1</sup>

Chief Judge Howard further observed that petitioner filed a second civil case seeking to enjoin suspension of his professional license. Petitioner moved for the subject judge's recusal, alleging bias in favor of the defendants in the second case and in the earlier litigation. Petitioner filed an emergency motion for default, which the judge denied as moot citing an earlier extension of time the court had given defendants. Subsequently, petitioner moved to expedite consideration of the motion for the judge's recusal; several non-parties filed motions to intervene; and defendants moved to dismiss the case. The judge denied the motions for recusal and to expedite. Petitioner filed a second motion to disqualify the judge, which the judge denied. The case was ultimately dismissed as barred by claim preclusion.<sup>2</sup>

Chief Judge Howard further observed that petitioner filed a third civil case in connection with the suspension of his license, which defendants moved to dismiss. The case, initially assigned to another district judge, was reassigned to the subject judge pursuant to a local rule that provides for the reassignment of a case to a judge that handled a related matter. Petitioner moved to vacate the reassignment and restore a motion hearing that the original district judge had scheduled. The subject judge denied

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<sup>1</sup> The Court of Appeals summarily affirmed the dismissal of the case, and found that the reviewed record did not indicate bias or otherwise call for the judge's recusal. The Court also denied petitioner's request for rehearing en banc.

<sup>2</sup> The Court of Appeals denied petitioner's appeal of the dismissal and his subsequent petition for rehearing en banc/petition for panel rehearing.

the motion to vacate, citing the local rule, and ultimately dismissed the case as not compliant with the Federal Rules of Civil Procedure, and barred by claim preclusion, immunity, and the relevant statutes of limitations.<sup>3</sup>

Chief Judge Howard found that the misconduct complaint and the record of the relevant proceedings provided no facts supporting the contention that the subject judge was biased or improperly motivated in presiding over petitioner's cases. The Chief Judge found that petitioner's principal claim -- that the subject judge exhibited bias by "ignoring" and improperly delaying in ruling on petitioner's motions -- was dispelled by the record, which showed that the judge resolved all pending motions and disposed of petitioner's cases in detailed decisions providing the legal bases for the judge's rulings. Contrary to petitioner's assertions, his third case was not reassigned by the subject judge, but by a different district court judge (with the subject judge's consent), because of a local district court rule, with no evidence of any improper motive. As there was no evidence of judicial bias, animus, or other misconduct, 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 dismissed petitioner's claim of improper delay as not cognizable. 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

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<sup>3</sup> Petitioner's appeal of the order of dismissal is pending.

motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.");<sup>4</sup> see also id. Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an action of the judge -- in other words, assigning a low priority to deciding the particular case."). Chief Judge Howard found that the same was true for petitioner's objections to the court's orders and decisions, including the dismissal of his cases, the denial of his requests for recusal, the reassignment of the third case, and the determination not to hold hearings. See 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, including a failure to recuse, without more, is merits-related."). Accordingly, Chief Judge Howard dismissed these claims, pursuant to 28 U.S.C. § 352 (b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

In the petition for review, petitioner alleges that, in an effort to "cover-up" the judge's "overt, blatant, unlawful [racial] discrimination" against petitioner, Chief Judge Howard wrongfully dismissed the misconduct complaint as an attack on the merits of petitioner's cases. Petitioner also repeats his allegations that the judge improperly reassigned a case to the judge's own docket, in violation of the local rule, and intentionally delayed in issuing rulings in petitioner's cases. Petitioner requests that the subject judge be publicly sanctioned for the alleged misconduct.

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<sup>4</sup> Based on the record, Chief Judge Howard determined that petitioner's three (3) cases were not "unrelated," and that there was no "habitual delay." See supra pp. 2-4.

The petition for review is meritless and is simply another attempt to reassert petitioner's disagreement with the court's decisions and orders. Petitioner offers no support for the allegations that Chief Judge Howard was improperly motivated in dismissing petitioner's complaint. See Commentary to Rules of Judicial-Conduct, Rule 3 ("Any allegation that calls into question the correctness of an . . . action of a judge - without more - is merits-related . . . Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related . . ."). The record remains devoid of evidence that the subject judge's handling of the cases, including the substance or timing of the court's rulings and the reassignment of the third case, was motivated by petitioner's race, pro se status, or any other improper reason.<sup>5</sup> As Chief Judge Howard observed, the judge addressed all pending motions and dismissed petitioner's three (3) cases in detailed rulings. As Chief Judge Howard also determined, the reassignment of petitioner's third case, pursuant to a local rule, does not evidence judicial bias. 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 motive, his objections to the judge's orders in his cases were properly dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii); Rules of Judicial-Conduct, Rules 11(c)(1)(B) and

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<sup>5</sup> Petitioner's reference to unrelated cases in which other judges allowed emergency motions for hearings does not, despite his claim to the contrary, constitute evidence of judicial bias or wrongdoing in petitioner's cases.

3(h)(3)(A). The same is true for petitioner's allegations of delay. See Rules of Judicial-Conduct, Rule 3(h)(3)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-18-90001 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

February 1, 2019  
Date

  
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Susan Goldberg, Secretary