

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-18-90020, 01-18-90021, 01-18-90022, AND 01-18-90023

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BEFORE  
Thompson and Kayatta, Circuit Judges  
Laplante, McConnell, and Delgado-Hernández, District Judges

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ORDER

ENTERED: JUNE 28, 2019

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Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Howard's orders dismissing petitioner's misconduct complaint, under 28 U.S.C. § 351(a), against three circuit judges of the United States Court of Appeals for the First Circuit and against a district judge. Petitioner alleged judicial misconduct in connection with the appeal of his discrimination case over which the appellate judges preside and the proceeding over which the district judge presides, to which petitioner is not a party. Chief Judge Howard dismissed the complaint as not cognizable, as not indicative of misconduct, and as baseless.<sup>1</sup>

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<sup>1</sup> Petitioner also filed a misconduct complaint alleging that a district judge and a magistrate judge engaged in judicial misconduct in presiding over another of petitioner's civil cases. See In Re: Judicial Misconduct Complaint Nos. 01-18-90013 and 01-18-90014. Chief Judge Howard dismissed that complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-18-90013 and 01-18-90014, April 1, 2019. The petition for review of the order dismissing that complaint is under review.

Petitioner originally alleged that the appellate judges treated petitioner in a "demonstrably egregious and hostile manner" by staying petitioner's appeal pursuant to the automatic stay provision of a statute. Petitioner further alleged that the appellate judges' enforcement of the stay and resulting delay in ruling on the merits of petitioner's appeal violated the governing rules of procedure. Petitioner alleged that the district judge had engaged in misconduct by "allow[ing]" the automatic stay in the district court case, without considering the impact on civil litigants who have pending discrimination cases.

In dismissing the complaint, Chief Judge Howard explained that the reviewed record, including the misconduct complaint, the relevant dockets, and the Court of Appeals' order, provided no support for petitioner's conclusory allegations of wrongdoing by any of the subject judges. Chief Judge Howard observed that, after petitioner appealed the dismissal of his case, the appellate court issued an order directing the parties to show cause whether the appeal was subject to an automatic stay arising from litigation pending with the subject district judge.<sup>2</sup> Chief Judge Howard further observed that, after the parties filed their responses, the Court of Appeals entered an order staying the appeal. Petitioner filed a response to the order staying his appeal, which the subject appellate judges treated as a motion for reconsideration of the stay and denied.

Chief Judge Howard dismissed petitioner's objections to the Court of Appeals' orders enforcing the stay, including the claims that the appellate judges violated the

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<sup>2</sup> The district court litigation involves a statute that provides for an automatic stay of any existing action or claim against the defendants. Petitioner did not seek relief from the stay.

governing rules of procedure and delayed in ruling on the merits of his appeal, as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(a)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(B).

Further, Chief Judge Howard concluded that, because the stay of the pending claims against the defendants took effect automatically, see nte. 2, supra, its application to petitioner's case was not indicative of judicial misconduct by the district judge. See 28 U.S.C. § 352(b)(1)(A)(i); see also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Finally, because petitioner presented no evidence that any of the subject judges treated petitioner improperly or engaged in any other judicial wrongdoing, Chief Judge Howard dismissed the complaint as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

In the petition for review, petitioner realleges that the subject circuit judges wrongfully stayed his appeal and adds that, in so doing, they ignored the evidence in petitioner's appeal. Petitioner also alleges that Chief Judge Howard treated petitioner "in a demonstrably egregious and hostile manner" by ignoring the evidence in petitioner's appeal and dismissing the misconduct complaint, and that the Chief Judge improperly disregarded the role of the Court of Appeals "to evaluate the appeals in cases where there is a [f]inal [j]udgment and [o]pinion." Petitioner additionally asserts that the court treated him "in a demonstrably egregious and hostile manner" by requiring him to resubmit documents filed in his appeal for purposes of his misconduct complaint.

The petition for review is meritless. Petitioner offers no support for the allegations that Chief Judge Howard ignored evidence relevant to the misconduct complaint, disregarded the appellate court's function, or treated petitioner improperly in dismissing the complaint.<sup>3</sup> See Rules of Judicial-Conduct, Commentary to Rule 4 ("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 judges treated petitioner improperly or otherwise engaged in misconduct in presiding over petitioner's cases. The petition for review is simply another attempt to assert petitioner's disagreement with the stay of his appeal. See id. Rules 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling . . .") and 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling . . . ."). Therefore, Chief Judge Howard properly dismissed the complaint as not indicative of misconduct, as not cognizable, and as baseless. See 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).

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<sup>3</sup> Although not necessary to the disposition of this matter, contrary to petitioner's allegations, petitioner was not required, either by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) or a direct communication from the court, to resubmit documents filed in his appeal with his misconduct complaint. See Rules of Judicial-Conduct.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-18-90020, 01-18-90021, 01-18-90022, and 01-18-90023 are affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

June 28, 2019

Date

  
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Susan Goldberg, Secretary