

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90034

BEFORE
Torruella, Thompson, AND Barron, Circuit Judges
Delgado-Hernández AND Talwani, District Judges

ORDER

ENTERED: JULY 17, 2020

Petitioner, a pro se plaintiff in an employment discrimination case closed more than twelve years ago, has filed a petition for review of Chief Judge Howard's order dismissing his misconduct complaint, under 28 U.S.C. § 351(a), against a First Circuit magistrate judge. Petitioner alleged judicial misconduct in connection with his case, over which the magistrate judge presided. Chief Judge Howard dismissed the complaint as frivolous and as not cognizable.¹

In the original complaint, petitioner levied confused and generalized allegations of misconduct against the magistrate judge. Petitioner appeared to allege that the magistrate

¹ This is petitioner's third misconduct complaint. See In re: Judicial Misconduct Complaint Nos. 01-08-90023, 01-08-90024, 01-08-90025, 01-08-90026, 01-08-90027, and 01-08-90028 (In re: Judicial Misconduct Complaint Nos. 01-08-90023 -- 01-08-90028), In re: Judicial Misconduct Complaint No. 01-16-90023, and infra at p. 3-4.

judge discriminated against him because of his health status, erred in issuing the court's findings of fact and rulings of law, and improperly entered judgment in favor of the defendant and denied petitioner's requests to reopen his case. Petitioner appeared to request damages.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct complaint procedure does not provide an avenue for awarding damages. 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.

Chief Judge Howard determined that, based on the reviewed record, including the instant and previous misconduct complaints and the dockets of the relevant proceedings, the misconduct complaint was meritless. The Chief Judge observed that, more than 15 years ago, petitioner filed, *pro se*, an employment discrimination case against his former employer. After a bench trial, the magistrate judge issued a lengthy decision, with findings of fact and rulings of law, and entered judgment for the defendant. After petitioner filed numerous motions, letters, and other documents over the course of nearly a year, the magistrate judge issued an order prohibiting him from filing further pleadings seeking to reopen the case, with which petitioner failed to comply.²

² The Chief Judge observed that petitioner filed two appeals -- petitioner voluntarily dismissed the first appeal, and the Court of Appeals dismissed the second appeal as untimely. After petitioner subsequently continued to file numerous requests for relief, the Court ordered the Clerk not to accept any further filings from petitioner. Petitioner continued to try to file pleadings in both appeals.

Chief Judge Howard further observed that petitioner filed two civil rights cases related to his employment discrimination case and the magistrate judge's role therein, both of which the district court dismissed.

The Chief Judge observed that petitioner filed his first judicial misconduct complaint in 2008 against the magistrate judge, three circuit judges, and two district judges, in connection with all three cases referenced above. See In re: Judicial Misconduct Complaint Nos. 01-08-90023 -- 01-08-90028, and nte. 1, supra. In dismissing that complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), Judge Selya determined that "[petitioner's] current compendium of proceedings is nothing more than a thinly veiled attempt to reassert his dissatisfaction with the court's rulings." See Order, Selya, C.J., In re: Judicial Misconduct Complaint Nos. 01-08-90023 -- 01-08-90028, October 16, 2008, at p. 4. The Judicial Council affirmed Judge Selya's order of dismissal. See Order, Judicial Council of the First Circuit, In re: Judicial Misconduct Complaint Nos. 01-08-90023 -- 01-08-90028, May 26, 2009.

Chief Judge Howard observed that petitioner filed a second misconduct complaint against the magistrate judge in connection with his employment discrimination case. See In re: Judicial Misconduct Complaint No. 01-16-90023, and nte. 1, supra. Chief Judge Howard dismissed this "redundant" complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), and warned petitioner that the filing of further repetitive misconduct complaints challenging fully and finally terminated rulings would precipitate an order to show cause, pursuant to Rule 10 of the Rules of Judicial-Conduct. See Order,

Howard, C.C.J., In re: Judicial Misconduct Complaint No. 01-16-90023, September 6, 2016. The Judicial Council affirmed the order of dismissal and repeated the Chief Judge's warning regarding continued filing of redundant and baseless misconduct complaints. See Order, Judicial Council of the First Circuit, In re: Judicial Misconduct Complaint No. 01-16-90023, February 7, 2017.

Chief Judge Howard determined that petitioner's instant misconduct complaint was simply another attempt by petitioner to reassert his objections to the magistrate judge's rulings in his employment discrimination case. As petitioner provided no additional information that would undermine the previous orders dismissing the same allegations of judicial misconduct, Chief Judge Howard dismissed the misconduct complaint as not cognizable and as frivolous, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C). The Chief Judge also issued an order requiring petitioner to show cause why he should not be restricted from filing additional misconduct complaints. See Rules of Judicial-Conduct, Rule 10(a).

In the petition for review, petitioner reiterates the allegations that the magistrate judge discriminated against him. Petitioner seems to allege that Chief Judge Howard did not review the misconduct complaint or the relevant case records adequately and reiterates his request for damages.

The petition for review is meritless. As an initial matter, and as Chief Judge Howard explained in dismissing the underlying misconduct complaint, the judicial

misconduct complaint procedure does not provide an avenue for awarding damages. See 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rules 11, 19, and 20. The petition for review is merely another attempt to reassert petitioner's disagreement with the magistrate judge's rulings in his case, terminated over a decade ago. Petitioner provides no facts to support the allegations that the magistrate judge discriminated against petitioner or that Chief Judge Howard did not adequately review his misconduct complaint or the relevant record. Accordingly, the misconduct complaint was properly dismissed as not cognizable and as frivolous, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C).

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint No. 01-18-90034 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

July 17, 2020
Date



Susan Goldberg, Secretary

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-18-90034

BEFORE
Torruella, Lynch, Thompson, Kayatta, AND Barron, Circuit Judges
Laplante, Delgado-Hernández, Levy, Talwani, AND McElroy, District Judges

ORDER

ENTERED: JULY 17, 2020

Chief Judge Howard, on behalf of the Judicial Council of the First Circuit, issued an order to show cause why petitioner should not be precluded from filing any new judicial misconduct complaints without the Judicial Council's prior permission (Show Cause Order). Show Cause Order, Howard, C.C.J., In re: Judicial Misconduct Complaint No. 01-18-90034, June 25, 2019. The Show Cause Order, issued pursuant to Rule 10(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), stated that petitioner had filed three judicial misconduct complaints: Nos. 01-08-90023, 01-08-90024, 01-08-90025, 01-08-90026, 01-08-90027, and 01-08-90028¹;

¹ Complaint Nos. 01-18-90023 -- 01-18-90028 was filed against six judges. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 8(a); and id. Commentary on Rule 8 (providing for "separate docket numbers for each subject judge.").

No. 01-16-90023; and No. 01-18-90034. Each complaint was found to be patently without merit.

Petitioner subsequently submitted a petition for Judicial Council review of the dismissal of Complaint No. 01-18-90034. Petitioner included in the petition for review a brief response to the Show Cause Order.

Petitioner's opposition to the Show Cause Order fails to provide any valid reason why his right to file further misconduct complaints should not be limited. Petitioner objects to the Show Cause Order as an "illegal" curtailing of his First Amendment rights. Petitioner has been afforded numerous opportunities to voice his dissatisfaction with the orders issued in the underlying cases, and the Chief Judge and the Judicial Council have repeatedly found no misconduct in connection with the proceedings. Petitioner provides no grounds for revisiting the orders dismissing his three misconduct complaints.

Petitioner's misuse of the complaint process -- by filing multiple redundant and frivolous complaints attacking the merits of the same final judicial rulings -- is precisely the type of circumstance contemplated by the adoption of the rule restricting further such filings (Rule 10(a) of the Rules of Judicial-Conduct).²

² "A complainant who has filed repetitive, harassing, or frivolous complaints . . . may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure." Rules of Judicial-Conduct, Rule 10(a).

Accordingly, no new complaints of judicial misconduct by petitioner shall be accepted for filing without the prior written permission of the Judicial Council. See Rules of Judicial-Conduct, Rule 10(a).

July 17, 2020
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Susan Goldberg, Secretary