

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90006 -- 01-19-90008

BEFORE
Lynch and Kayatta, Circuit Judges
Laplante, Levy, and McElroy, District Judges

ORDER

ENTERED: OCTOBER 5, 2020

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 one appellate and two district judges in the First Circuit. Petitioner alleged judicial misconduct in connection with his civil rights case and subsequent appeal, over which the district judges and circuit judge presided, respectively. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.¹

¹ This is petitioner's third misconduct complaint related to the case at issue in the present matter and his fourth misconduct complaint overall. In 2012, petitioner filed a misconduct complaint alleging that one of the district judges named in the instant complaint engaged in judicial misconduct in presiding over the case. Then Chief Judge Lynch dismissed the misconduct complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, January 31, 2013, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-12-90031, June 19, 2013. In 2018, petitioner filed a second misconduct complaint against five appellate judges (including the one named in the instant complaint) and the two district judges named in the instant complaint in connection with the same case and its subsequent appeal. Judge Kayatta dismissed the misconduct complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Kayatta, C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-18-90002 -- 01-18-90008, October 26, 2018. In 2018, petitioner also filed an unrelated misconduct complaint against a district judge in connection with a different civil rights case over

In the pending matter, petitioner repeated allegations from his previous misconduct complaints, see supra, note 1, alleging that the district judges and the appellate judge should have recused from his district court case and subsequent appeal because the judges had a conflict of interest based on the President who nominated them. Petitioner further alleged that the judges "conspired to deny [petitioner] his Constitutional right to a fair and unbiased adjudication" of his case. Petitioner asserted that two of the judges "dismissed and covered up" the other judge's "refusal to recuse," and further contended that two of the subject judges, whom petitioner did not identify, illegally "intercepted" mail addressed to other judges and concealed information about the above-mentioned President. Petitioner also alleged that one district judge was racially biased, committed perjury by intentionally misrepresenting petitioner's legal arguments, and, by dismissing his case, denied him his right to be heard and committed a fraud on the court.

In dismissing the complaint, Chief Judge Howard determined that the misconduct complaint was meritless. The Chief Judge concluded that the reviewed record, including the misconduct complaint, the docket of the proceedings, and the courts' orders, provided no support for petitioner's conclusory allegations of bias or other wrongdoing by any of the subject judges.

which the judge presided but to which petitioner was not a party. Chief Judge Howard dismissed the 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 No. 01-18-90010, October 29, 2018.

Chief Judge Howard's review of the record indicated that, shortly after petitioner filed the civil rights case, petitioner requested that the district judge to whom the case was initially assigned (first district judge) recuse, asserting a purported conflict of interest. The judge denied the recusal request and dismissed the case for failure to state a claim and for lack of standing, and the Court of Appeals affirmed the order of dismissal. Over the next several months, petitioner filed numerous pleadings, including a motion to vacate the Court of Appeals' judgment, which the Court denied.

Chief Judge Howard further observed that, more than a year after the mandate had issued, petitioner filed a motion in the district court seeking to reopen the case and to reconsider the order of dismissal and the first district judge's recusal. The first district judge denied the motion as untimely and repetitive. More than a year later, petitioner sought to file an amended complaint, adding the first district judge as a defendant. The first district judge recused, and the case was reassigned to the second district judge, who denied the motion. Subsequently, petitioner filed a letter to the then chief judge in which petitioner reiterated that the first district judge should have recused. In an electronic order, the second district judge explained that the chief judge did not have jurisdiction to review decisions of other judges and that the court would take no further action.

Chief Judge Howard determined that petitioner provided, and the record revealed, no information to support the allegations that any of the subject judges was biased or had

a conflict of interest,² had concealed evidence, or "intercepted" petitioner's mail. Further, Chief Judge Howard determined that petitioner's conclusory allegations that the first district judge intentionally misrepresented petitioner's legal arguments or that the subject judges conspired to deny petitioner fair adjudication of his cases were also unfounded. Rather, the record showed that each of the subject judges issued reasoned rulings that reflected consideration of petitioner's pleadings. Therefore, the Chief Judge dismissed the complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

As there was no evidence of bias or improper motive, Chief Judge Howard dismissed petitioner's objections to the courts' orders as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Rules of Judicial-Conduct, Rules 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse. If the decision or ruling is alleged to be the result of an improper motive . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision."), and 11(c)(1)(B).

In the petition for review, petitioner repeats his allegations that the subject judges should have recused from his case because of the conflict of interest engendered by their

² See, e.g., Code of Conduct for United States Judges (Code of Conduct), Canon 3(C)(1) (providing grounds for questioning judge's impartiality). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Commentary on Rule 4 (explaining that a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute).

Presidential nomination and that the judges conspired to deny petitioner his right "to be heard in court."³ Petitioner also repeats the allegations that the first district judge was racially biased, intentionally misrepresented petitioner's legal arguments, concealed information favorable to petitioner, and committed a fraud on the court by dismissing his case.⁴ Petitioner adds that the first district judge improperly denied his right to a hearing and granted his motion to proceed in forma pauperis (IFP) only in order to dismiss his case pursuant to 28 U.S.C. § 1915(e)(2).⁵ Petitioner also seems to allege that the subject judges delayed in adjudicating his case.

Petitioner additionally alleges that Chief Judge Howard is biased against pro se litigants, "does not believe that a [j]udge should recuse themselves under any circumstances," and dismissed petitioner's misconduct complaint without considering the evidence provided.

The petition for review is meritless. Petitioner offers and the record provides no information that supports the allegations that Chief Judge Howard is biased or failed to review petitioner's misconduct complaint adequately. To the contrary, the order of dismissal demonstrates that Chief Judge Howard thoroughly reviewed both the

³ Petitioner's vague claim that other judges in the First Circuit generally have this same conflict of interest is not addressed, as they are not identified in the underlying complaint. See generally Rules of Judicial-Conduct, Rules 1 and 6(b). Similarly, insofar as petitioner alleges improper conduct by court employees, these claims are not addressed, as the judicial misconduct complaint process only covers current federal judges. See 28 U.S.C. § 351, *et. seq.*, and Rules of Judicial-Conduct, Rule 1(b).

⁴ Petitioner cites a variety of Constitutional provisions, statutes, and rules, but neither alleges nor offers any information indicating that any of the subject judges failed to comply with the referenced provisions. Petitioner's citations to the American Bar Association Model Code of Judicial Conduct are also inapposite, as the Code of Conduct applies to the federal judiciary.

⁵ The statute provides, in relevant part, that the court may dismiss at any time a case brought in forma pauperis if "the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2).

misconduct complaint and the underlying record of petitioner's litigation in finding no evidence of judicial bias or other wrongdoing. See supra, pp. 2-4, and Rules of Judicial-Conduct, Commentary to Rule 4 ("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. . . .").

There remains no evidence to support petitioner's claims of judicial bias, conspiracy, conflict of interest, or other wrongdoing on the part of the subject judges. The record is replete with orders explaining the reasons for the courts' rulings and demonstrating consideration of petitioner's arguments. See supra, pp. 2-4. There is also no evidence that the first district judge was improperly motivated when the judge granted petitioner's request for IFP status or dismissed the case without a hearing. See supra, note 5. Absent evidence of improper motive, petitioner's claims of judicial delay in adjudicating his cases and his continued objections to the courts' orders are not cognizable. See Rules of Judicial-Conduct, Rules 4(b)(1) and 4(b)(2) ("Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision"). Therefore, Chief Judge Howard properly dismissed the complaint as not cognizable and as baseless. See 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and 11(c)(1)(D)

For the reasons stated, the order of dismissal issued in Judicial Misconduct
Complaint Nos. 01-19-90006 -- 01-19-90008 is affirmed. See Rules of Judicial-Conduct,
Rule 19(b)(1).

October 5, 2020
Date



Susan Goldberg, Secretary