

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-20-90008

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

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ORDER

ENTERED: MAY 9, 2022

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Petitioner, a pro se litigant, has filed a petition for review of then Chief Judge Howard's order dismissing petitioner's complaint, under 28 U.S.C. § 351(a), against a bankruptcy judge in the First Circuit in connection with an adversary proceeding over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.<sup>1</sup>

In the original complaint, petitioner alleged that the judge was biased against him and in favor of the U.S. Trustee (trustee), and, as a result, ignored the trustee's "illegal and unethical" conduct throughout the adversary proceeding. Petitioner averred that, motivated by bias and favoritism, the judge made a series of improper decisions, including: dismissing petitioner's civil rights and discrimination counterclaim; applying

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<sup>1</sup> Petitioner filed a previous misconduct complaint, in which he objected to a district judge's handling of his civil case. Then Chief Judge Boudin dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), and the Judicial Council affirmed the order of dismissal. See Boudin, C.C.J., Order, In Re: Complaint No. 475 (January 2, 2008); and Judicial Council of the First Circuit, Order, In Re: Complaint No. 475 (No. 01-07-90012) (May 6, 2008).

rules of discovery to prevent petitioner from deposing the trustee; denying petitioner a jury trial; allowing the trustee to call petitioner, who was pro se, as a witness during the trial; allowing the trustee's employee to testify at trial; and denying petitioner's motion to dismiss the adversary proceeding.

Then Chief Judge Howard determined that the reviewed record, including the misconduct complaint, the docket of the proceeding, and the court's orders, provided no evidence in support of petitioner's allegations of bias or other judicial wrongdoing. See Howard, C.C.J., Order, [In Re: Judicial Misconduct Complaint No. 01-20-90008](#), January 20, 2021.

Summarizing the record of the proceedings, the Chief Judge observed that the trustee commenced an adversary proceeding alleging that petitioner had engaged in the unauthorized practice of law. Petitioner filed an answer and a counterclaim, in which he requested a jury trial and alleged, in part, that the trustee was discriminating against petitioner based on his race and nationality by bringing the adversary proceeding. The trustee moved to dismiss the counterclaim for failure to state a claim upon which relief could be granted and because petitioner lacked standing. The judge held a hearing on the motion to dismiss, granted the motion for the reasons set forth by the trustee in the motion to dismiss, and denied petitioner's request for a jury trial.

Thereafter, the judge held a hearing on petitioner's motion to compel the production of documents and granted the motion in part, ordering the trustee to produce any written complaints alleging that the trustee had discriminated against others. The judge also held a hearing on petitioner's motions to compel a deposition of the trustee and

for reconsideration of his jury trial demand, at which the court denied the motion for reconsideration, explaining that petitioner did not have a right to a jury trial regarding the trustee's claims. With respect to the motion to compel, the judge ordered petitioner to submit a brief outlining the extraordinary circumstances warranting the trustee's deposition. At the continued hearing on this issue, the judge denied the motion to compel, finding that petitioner had not demonstrated, as required, that the trustee had firsthand information that could not be obtained from other witnesses or by other means of discovery.

Petitioner subsequently moved to dismiss the adversary proceeding on the grounds that the trustee had failed to serve petitioner properly with notice of a motion for discharge in the underlying bankruptcy case. The judge denied the motion, reasoning that the ministerial act of closing the underlying case did not impact either petitioner's rights in or the court's jurisdiction over the adversary proceeding.

The court held a bench trial at which petitioner presented opening and closing arguments and cross-examined the trustee's witnesses, one of whom was an employee of the trustee. Noting that the trustee had listed petitioner as a witness in the pretrial memorandum, the court allowed the trustee to call petitioner to testify, over petitioner's objection. Thereafter, the judge issued a lengthy opinion finding, in part, that petitioner had engaged in the unauthorized practice of law and in fraudulent, unfair, and deceptive acts.

Then Chief Judge Howard determined that neither the complaint nor the record of the proceeding contained any facts supporting petitioner's allegations that the judge was

biased against petitioner or in favor of the trustee. On the contrary, the lengthy record reflected that the judge considered the merits of petitioner's many motions, at times ruling in his favor, and held multiple hearings, as well as a trial, during which, according to the lengthy trial transcript, petitioner presented arguments and cross-examined witnesses, and the judge patiently fielded dozens of objections from petitioner. Further, in the lengthy, detailed opinion, the judge recounted the facts of the case and carefully explained the reasons for the court's rulings. As there was no evidence of improper judicial motive, then Chief Judge Howard dismissed the misconduct complaint as baseless and, in so far as petitioner challenged the substance of the court's rulings, as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D) and 11(c)(1)(B), respectively.

In the petition for review, petitioner contends that the record of the adversary proceeding "clearly show[s]" that the judge engaged in judicial misconduct and discrimination. Petitioner contends that the trustee's employee testified at trial that the trustee "discriminate[d] against [petitioner because he was a] minority." Petitioner asserts that, motivated by bias and favoritism for the trustee, the judge discriminated against petitioner based on his pro se status, "race, origin of . . . nationality, and religion[,] . . . protecting the interest [of] the [trustee]" throughout the proceeding. Petitioner realleges that, as a result of this "friendly relationship" with the trustee, the judge made a series of improper decisions in favor of the trustee, including: dismissing petitioner's civil rights and discrimination counterclaim; denying petitioner's request to depose the trustee;

denying petitioner a jury trial; and denying petitioner's motion to dismiss the adversary proceeding. Petitioner concludes that the judge should have recused from the proceedings based on the judge's friendship with the trustee.

The petition for review is meritless. Petitioner offers and the record provides no information that then Chief Judge Howard misinterpreted the record or improperly dismissed the complaint. To the contrary, the order of dismissal demonstrates that Chief Judge Howard thoroughly reviewed both the misconduct complaint and the underlying records of petitioner's proceedings. See 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. . . .").

Petitioner offers no information indicating that the judge was biased in favor of the trustee, improperly motivated, or discriminated against petitioner based on his race, nationality, religion, pro se status, or for any other reason. Petitioner's new allegation that the trustee's employee testified that the trustee discriminated against petitioner is belied by the record, which contains no such testimony. As Chief Judge Howard determined, the record demonstrates that the judge considered petitioner's many motions, at times ruled in petitioner's favor, held multiple hearings, as well as a trial, and issued a lengthy, detailed opinion, carefully providing the bases for the court's rulings. Petitioner's objections to the substance of the judge's rulings - including the dismissal of petitioner's counterclaim,


denial of petitioner's motion to dismiss and request for a jury trial, and orders and rulings regarding discovery and testimony - as well as petitioner's assertion that the judge should have recused, do not alone evidence bias, improper motive, or misconduct.

Therefore, Chief Judge Howard properly dismissed the misconduct complaint as baseless and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rule 11(c)(1)(D) and 11(c)(1)(B), respectively.

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint No. 01-20-90008 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

May 9, 2022

Date

  
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Susan Goldberg, Secretary