

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90010 AND COMPLAINT NO. 01-20-90017

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

ORDER

ENTERED: JULY 11, 2022

Petitioner, a former criminal defendant and respondent in a civil commitment proceeding, has filed petitions for review of orders issued by then Chief Judge Howard (referred to as "Chief Judge") dismissing petitioner's complaints, under 28 U.S.C. § 351(a), against two First Circuit district court judges in connection with his criminal case and civil commitment proceeding, respectively. Chief Judge Howard dismissed the complaints as baseless and as not cognizable.¹ For the reasons explained below, the orders of dismissal are affirmed.

¹ The underlying complaints are petitioner's second and third. In 2016, petitioner filed a misconduct complaint against the same judges who are the subjects of the present matters including many of the same claims made here. See Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007. Chief Judge Howard dismissed the misconduct complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii), and the First Circuit Judicial Council affirmed the order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, July 18, 2016, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-16-90006 and 01-16-90007, August 1, 2017.

Complaint No. 01-20-90017²

Repeating claims from a previous misconduct complaint, see supra note 1, petitioner alleged that the first subject judge "abused [the] courtroom by judicial force" by unlawfully "conspir[ing]" to prosecute petitioner. Petitioner contended that, although the judge was "aware" of petitioner's innocence and that the court did not have subject matter jurisdiction, the judge wrongfully ordered petitioner to be incarcerated before trial. Petitioner added that, during petitioner's pretrial detention, the judge improperly ordered a competency evaluation by a second psychologist and issued a legally insufficient order delaying petitioner's trial. Petitioner also alleged that, after dismissing the indictment, the judge improperly ordered petitioner confined on "dangerousness" charges, conspired with the judge who is the subject of the other complaint (No. 01-20-90010), see infra p. 6, to confine petitioner, and "committed a criminal act" by publishing an order on LexisNexis. Finally, petitioner requested transfer of the complaint to a different circuit, the appointment of a special committee, and release from custody.³

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct complaint process does not provide an avenue for obtaining relief in a case, that no "exceptional circumstances" existed that would warrant transfer of the complaint

² Complaint No. 01-20-90017 is discussed before Complaint No. 01-20-90010 in order to reflect the chronology of the relevant events.

³ In his complaints, petitioner included apparent allegations against Bureau of Prisons staff and his attorney, which were not addressed, as the judicial misconduct complaint process provides an avenue for asserting claims against federal judges only. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 1(b). Petitioner also cited provisions of the Code of Conduct for United States Judges (Code of Conduct), but neither alleged nor offered any information indicating that either judge violated the referenced provisions. As explained infra pp. 4-5 and 8-9, the record of these matters offered no indication that either judge violated the Code of Conduct, let alone engaged in misconduct.

to another circuit, and that appointment of a special committee was not warranted as the complaint, considered in the context of the record as a whole, presented no basis for further investigation. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, 20, and 26 (providing that in "exceptional circumstances" a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding), and Commentary on Rule 11 ("[D]ismissal is appropriate 'when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence.' 28 U.S.C. § 352(b)(1)(B).").

The Chief Judge summarized the record of the proceedings and concluded that the record offered no support for petitioner's allegations. Following petitioner's indictment and detention hearing, another judge ordered petitioner detained pending trial because petitioner was a danger to the community. The first subject judge allowed a joint motion for an evaluation of petitioner's competency to stand trial, and the evaluating psychologist found that petitioner was competent.

After a status hearing, at which petitioner appeared, the judge ordered a competency evaluation by a second psychologist based on both the prosecutor's request and defense counsel's representations regarding petitioner. Following a competency hearing, at which the psychologists provided diverging opinions, the judge concluded that petitioner suffered from various specified diseases rendering him mentally incompetent to assist properly in his defense and/or to conduct his own defense.

The court issued a number of orders postponing petitioner's trial, pending a determination of whether appropriate treatment might restore petitioner's competency, including the order to which petitioner specifically objected as legally insufficient. The judge also denied, in a multiple-page order, a motion that petitioner filed challenging the indictment. After a restoration of competency hearing, the court found that, based upon expert testimony and the recently completed evaluation, petitioner had not been and could not be restored to competency in the foreseeable future, ordered petitioner's continued detention pending an assessment for dangerousness, and ultimately dismissed the indictment.

Chief Judge Howard determined that there was no evidence to support petitioner's claims that the judge was biased or improperly motivated in presiding over petitioner's case or that the judge engaged in conspiracy to prosecute or detain petitioner, let alone did so despite knowledge of petitioner's innocence or in the absence of jurisdiction. Rather, the record indicated that the judge held multiple hearings, considered the substance of petitioner's claims and defenses, and issued extensive, reasoned rulings based on the record before the court. See supra pp. 3-4. Further, Chief Judge Howard determined that the appearance of the court's unpublished order on LexisNexis was neither attributable to the judge nor indicative of misconduct. Therefore, the Chief Judge 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).

The Chief Judge further determined that, as there was no evidence of improper judicial motive, petitioner's challenges to the court's orders were not cognizable. See

Rules of Judicial-Conduct, Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling 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 Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge — without more — is merits-related."). Accordingly, Chief Judge Howard dismissed the complaint as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

In his petition for review, petitioner challenges the merits of petitioner's prosecution, detention, and civil commitment before the first subject judge. Petitioner repeats the allegations that the court did not have jurisdiction over him, and that the judge "conspired" to prosecute petitioner and improperly ordered a second competency evaluation. Petitioner repeats his objections to the judge's order denying petitioner's motion challenging his indictment, which appeared on LexisNexis. Petitioner alleges, for the first time, that the judge "used [the] record" from petitioner's unrelated state court criminal proceeding, in which the judge acted as the prosecutor, "to civilly commit [him] wrongfully," and that he was denied a jury trial in violation of the Sixth Amendment. Petitioner suggests that the judge retaliated against petitioner because of a civil lawsuit that petitioner filed against a state government.

Petitioner alleges that, contrary to Chief Judge Howard's description of the record, petitioner's time in the custody of the Attorney General exceeded the applicable statutory

maximum. Petitioner asserts that Chief Judge Howard omitted unspecified facts from the order dismissing his misconduct complaint, and "lie[d] for" the first subject judge.

Petitioner requests that his petition for review be transferred to another circuit under Rule 26 of the Rules of Judicial-Conduct and that a special committee be appointed because Chief Judge Howard is "prejudice[d] and bias[ed]" in favor of the subject judge.

Complaint No. 01-20-90010

Repeating claims from a previous misconduct complaint, see supra note 1, petitioner alleged that the second subject judge abused the "oath of office," used "force," and violated petitioner's constitutional rights when the judge, unlawfully and without jurisdiction, ordered petitioner civilly committed. Petitioner also alleged that the judge detained him unlawfully when the judge improperly converted a discharge hearing to a hearing on pending motions and unlawfully tried to commit petitioner to state custody.

Petitioner further asserted that the judge improperly tried to appoint a guardian ad litem on petitioner's behalf, and abused the court's authority by trying to subject petitioner to an unnecessary psychological evaluation in order to "injure" him through involuntary medications. Finally, petitioner alleged that the judge conspired with the first subject judge, see supra p. 2, to confine petitioner and that his detention exceeded the applicable maximum sentence. Petitioner requested the removal of both the second judge and his court appointed attorney from his case, to be released from custody, the transfer of his misconduct complaint to another circuit, and the appointment of a special committee.

As with petitioner's complaint against the first judge, Chief Judge Howard explained that, as a preliminary matter, the judicial misconduct complaint process does not provide an avenue for obtaining relief in a case, that no "exceptional circumstances" existed that would warrant the transfer of the complaint to another circuit, and that appointment of a special committee was not warranted. See supra pp. 2-3 (citing 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rules 11, 19, 20, and 26, and Commentary on Rule 11).

The Chief Judge summarized the record of the proceedings and concluded that there was no evidence in the complaint or the record in support of petitioner's allegations. After a multiple-day evidentiary hearing in petitioner's civil commitment proceeding, the second subject judge issued a lengthy memorandum and order concluding that the government had proven that petitioner met the statutory dangerousness standard for civil commitment. The judge ordered petitioner committed to the custody of the Attorney General and the submission of annual reports concerning his continued need for hospitalization.

Petitioner's civil commitment proceeding continued over a number of years, during which time the judge appointed a guardian ad litem, held an evidentiary hearing regarding and ultimately denied petitioner's motion for discharge, and requested that the U.S. Attorney's Office attempt to find a suitable state facility for petitioner in light of petitioner's inadequate treatment and evaluation.

A few weeks before his scheduled release hearing, petitioner filed motions for the judge's recusal, for counsel to withdraw, and for a hearing on the motion to recuse. The

judge converted the release hearing to a hearing on the pending motions, denied the motions after the hearing, and subsequently appointed a second guardian ad litem. Several months later, petitioner filed a motion for compassionate release, which the judge denied on the ground that petitioner would be a danger to the community, but noted that counsel and the guardian ad litem were exploring possible conditions of release consistent with community safety.

Chief Judge Howard determined that there was no evidence to suggest that the second subject judge was biased or improperly motivated in presiding over petitioner's proceeding, conspired to commit petitioner, wrongfully delayed his discharge hearing, unlawfully tried to commit him, or sought to harm petitioner through unnecessary psychological evaluation. To the contrary, the judge held multiple evidentiary hearings, and, based thereon, issued lengthy, reasoned orders on petitioner's civil commitment and worked with the government to find petitioner a suitable setting. See supra pp. 7-8. Therefore, Chief Judge Howard dismissed the complaint as baseless, pursuant 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

As there was no evidence of bias or improper judicial motive, the Chief Judge further determined that petitioner's challenges to the court's orders and claim that the judge improperly delayed petitioner's discharge hearing were not cognizable. See Rules of Judicial-Conduct, Rule 4(b)(1), Rule 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"), and Commentary on Rule 4 ("[A] complaint of delay in a single case is excluded as merits-related.").

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

Challenging this order of dismissal, petitioner asserts that his complaint against the second subject judge has "merit" and is not repetitive of his previous complaint. See supra note 1. Petitioner repeats his allegation that the judge used improper "force," civilly committed him without jurisdiction, and should be removed from his case. Petitioner further asserts that his time in the custody of the Attorney General exceeded the applicable statutory maximum and that the judge continues to hold status conferences without petitioner present, in violation of the Confrontation Clause, including one at which the judge stated that the government has shown that petitioner is a danger to the community. Petitioner charges that he has not been informed of the substance of that hearing, has not been provided with a transcript, and did not timely receive a copy of the "docket entry sheet" regarding the hearing. Petitioner states that he "should be released at once" and requests that Chief Judge Howard act on his request for compassionate release filed in the Court of Appeals.

Analysis

The petitions for review are meritless. First, as Chief Judge Howard explained, the judicial misconduct complaint process does not provide an avenue for obtaining relief in a case, including petitioner's release from custody, the removal of a judge, or the issuance of an order in an appeal, and no "exceptional circumstances" exist that would warrant transfer of the complaint to another circuit. See supra pp. 2-3 and 7 (citing 28 U.S.C. §

351, et seq., and Rules of Judicial-Conduct, Rules 11, 19, 20, and 26). Further, the appointment of a special committee remains unwarranted where, as here, the misconduct complaints and petitions for review, when considered with the records of the underlying proceedings, provide no basis for further inquiry. See id. (citing Rules of Judicial-Conduct, Rule 11 and Commentary on Rule 11), and Rules of Judicial-Conduct, Rule 19(b)(3) (providing that, upon review of a petition for review, a judicial council may direct the appointment of a special committee under Rule 11(f) of the Rules of Judicial-Conduct).

Moreover, neither petitioner nor the record provides any support for petitioner's allegations that Chief Judge Howard was improperly motivated, or intentionally omitted facts, "lie[d]," or misrepresented portions of the record in the order dismissing the misconduct complaint against the first subject judge. To the contrary, the extensive orders of dismissal of both complaints indicate that Chief Judge Howard thoroughly reviewed and accurately described the misconduct complaints and the lengthy records of the underlying proceedings. See supra pp. 2-4 and 6-8, 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 that the judges "conspired" against petitioner, unreasonably or improperly asserted the court's authority, or were otherwise improperly motivated in presiding over petitioner's cases. To the

contrary, the records of both proceedings indicate that the judges held multiple hearings, considered petitioner's claims and arguments, and issued extensive, reasoned rulings. See supra pp. 3-4 and 7-8. Further, petitioner offers no facts indicating that the first subject judge prosecuted petitioner in an unrelated state court matter or in any way "used" the record of another case in presiding over the present proceeding.⁴ Likewise, petitioner offers and the record includes no support for petitioner's conclusory allegation that the first subject judge retaliated against petitioner.

Petitioner's allegations that the second subject judge has held hearings without petitioner present and that petitioner has not been informed of the substance of these hearings are not indicative of misconduct by the judge, as petitioner is represented by counsel who has appeared at these proceedings, including the one to which petitioner specifically objects. The same is true for petitioner's allegations regarding his difficulty obtaining a copy of a transcript of this hearing and a docket sheet. See Howard, C.C.J., Order, In Re Complaint No. 01-20-90004, at pp. 5-6, October 28, 2020 ("[A]ny errors by court staff in exercising their administrative duties would not suggest judicial bias or wrongdoing.") (citing Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-13-90015, at pp. 3-4, December 18, 2013).⁵

Absent evidence of improper motive or other judicial wrongdoing, petitioner's continued objections to the courts' rulings are not cognizable. See Rules of Judicial-

⁴ Although not necessary to the resolution of this matter, a judge's participation in a prior unrelated state court case would not alone require recusal from a subsequent federal proceeding. See Code of Conduct, Canon 3(C)(1)(e).


⁵ The record indicates that petitioner received a copy of the docket sheet and transcript of the specified hearing within two weeks of his request.

Conduct, Rule 4(b)(1). Accordingly, Chief Judge Howard properly dismissed the complaints as baseless and as not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B).

Accordingly, the orders of dismissal issued in Judicial Misconduct Complaint No. 01-20-90017 and Complaint No. 01-20-90010 are affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

July 11, 2022

Date



Susan Goldberg, Secretary