

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90002 and 01-16-90003

BEFORE
Lynch, Thompson, and Barron, Circuit Judges
Casper and Delgado-Hernández, District Judges

ORDER

ENTERED: MAY 8, 2017

Petitioner, an incarcerated pro se litigant, has filed a petition for review of Judge Torruella's order dismissing his complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge and magistrate judge. Petitioner alleged that the judicial officers mishandled petitioner's recent civil case challenging his state court conviction and incarceration. Judge Torruella dismissed the complaint as frivolous and not cognizable.

Petitioner originally alleged that the district judge and magistrate judge wrongfully relied on a statute that they knew to be unconstitutional when they dismissed petitioner's civil action challenging his underlying state court conviction and sentence.¹ Petitioner also alleged that the state judge engaged in wrongful conduct in the criminal proceeding.

¹ Petitioner has filed over 20 collateral attacks in federal court on his underlying state court prosecution, conviction, and incarceration.

Judge Torruella determined that the reviewed record provided no support for petitioner's incoherent allegations of judicial impropriety. Judge Torruella's review of the record indicated that the magistrate judge recommended denial of petitioner's motion to proceed *in forma pauperis* because petitioner had failed to comply with the relevant statutory requirements. When petitioner neglected to submit the required fee, the district judge adopted the magistrate judge's recommendation and dismissed the case.

Judge Torruella determined that the complaint was based exclusively on petitioner's disagreement with the court's orders. As there was no evidence that the magistrate judge or the district judge harbored illicit motivation in connection with the civil proceeding, Judge Torruella dismissed the complaint as frivolous and as not cognizable. See 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C) and 11(c)(1)(B).

In the petition for review, petitioner asserts that, in the order dismissing the complaint, Judge Torruella was condescending and insulting to petitioner and to pro se litigants.² Petitioner also repeats the allegations that the magistrate judge and district judge wrongfully dismissed his civil proceeding, reiterating the alleged unconstitutionality of his underlying conviction and sentence and the state judge's purported wrongful conduct.

² Petitioner also alleges that another Court of Appeals judge influenced this misconduct proceeding. Petitioner provides no basis for this claim.

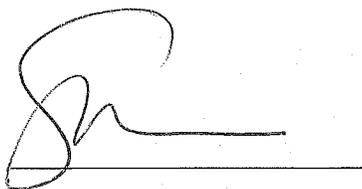
The petition for review is meritless. Petitioner provides no basis for the allegations that Judge Torruella is biased against petitioner or against pro se litigants. Nor does Judge Torruella's order contain language that is insulting or condescending, let alone indicative of misconduct. See Rules of Judicial-Conduct, Rule 3(h)(1)(D) ("Cognizable misconduct . . . includes . . . treating litigants or attorneys in a demonstrably egregious and hostile manner . . ."). The order issued in this proceeding "do[es] not even approach 'the sort of deep-seated unequivocal antagonism that may constitute misconduct.'" See Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 6, quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 24, 2011).

As to the original complaint, petitioner offers no information that would undermine Judge Torruella's determinations. There remains no evidence of wrongdoing by either the judge or the magistrate judge. Petitioner's continued objections to the court's ruling do not indicate misconduct or bias on the part of either judicial officer. Accordingly, the misconduct complaint was appropriately dismissed as frivolous 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)(C) and 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-16-90002 and 01-16-90003 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

5/8/17

Date

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Susan Goldberg, Secretary

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-16-90002 and 01-16-90003

BEFORE
Torruella, Lynch, Thompson, Kayatta, and Barron, Circuit Judges
Levy, Casper, Laplante, Delgado-Hernández, and McConnell, District Judges

ORDER

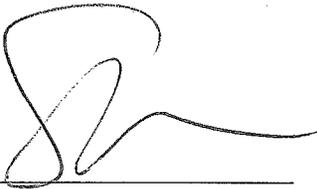
ENTERED: MAY 8, 2017

On May 31, 2016, Judge Torruella, on behalf of the Judicial Council of the First Circuit, issued an order to show cause why the complainant should not be precluded from filing any new judicial misconduct complaints. 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 the complainant had filed four judicial misconduct complaints. These included: Complaint No. 328, filed on August 8, 2002 and dismissed on September 23, 2002; Complaint No. 474, filed on October 1, 2007 and dismissed on December 6, 2007; and Complaint Nos. 01-16-90002 and 01-16-90003, filed on January 29, 2016 and dismissed on May 31, 2016. Each complaint was found to be patently without merit.

The Show Cause Order allowed the complainant 42 days in which to file a written opposition with the Office of the Circuit Executive. During this time, complainant submitted a petition for Judicial Council review of the dismissal of Complaint Nos. 01-16-90002 and 01-16-90003. Petitioner has not submitted a response to the Show Cause Order. Nor does the petition for review explain, as the Show Cause Order directs, "why an order should not be entered by the Judicial Council precluding [petitioner] from filing any new judicial misconduct complaints without prior permission of the Judicial Council." Accordingly, absent further order by the Judicial Council, no new complaints of judicial misconduct by the complainant shall be accepted for filing. See Rules of Judicial-Conduct, Rule 10(a).

5/8/17

Date

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Susan Goldberg, Secretary