

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINT NO. 01-16-90005

---

BEFORE  
Lynch and Kayatta, Circuit Judges  
Laplante, McConnell and Delgado-Hernández, District Judges

---

ORDER

ENTERED: DECEMBER 19, 2016

---

Petitioner, a defendant in a civil case, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against a First Circuit district judge. Petitioner alleged that the judge engaged in wrongdoing while presiding over a civil case filed against petitioner by his former employer. Chief Judge Howard dismissed the complaint as unsupported and not cognizable.

In the original complaint, petitioner alleged that the judge was biased in favor of petitioner's former employer, which had sued petitioner for the alleged disclosure of the company's confidential information. Petitioner asserted that the judge was hostile toward petitioner and his counsel, and ignored petitioner, his counsel and their filings. Petitioner maintained that the court damaged his reputation and ability to secure a job, by requiring

him to notify potential employers of a preliminary injunction that the court issued, and wrongfully held petitioner in contempt when petitioner complied with the preliminary injunction. Petitioner further asserted that the judge improperly relied on a proposed settlement letter as a schedule of court proceedings and provided insufficient notice of a mediation. Petitioner also alleged that his attorneys withdrew because they were afraid of the judge and that the judge supported an inequitable settlement that petitioner accepted, on the advice of replacement counsel. Petitioner concluded that the judge sanctioned the perjured testimony of a key witness and denied petitioner the due process to which he was entitled.

Chief Judge Howard found no support in the reviewed record for petitioner's allegations and dismissed the complaint as unfounded and not cognizable. The Chief Judge detailed the chronology of the proceeding and observed that the court held multiple hearings at which it attended to arguments from both parties and issued numerous orders, including rulings in favor of petitioner.

With respect to the preliminary injunction, the Chief Judge observed that, after a hearing, the judge issued an injunctive order, which enjoined petitioner from using or disclosing plaintiff's proprietary information and required petitioner to furnish a copy of the order to all individuals he had provided with such information. Chief Judge Howard further observed that, following repeated warnings to petitioner to comply with the

injunctive order and a hearing, the judge found petitioner in contempt, and ordered that petitioner's bond be forfeited for failure to comply with the injunction.

With respect to petitioner's claim concerning notice of the mediation, Chief Judge Howard noted that, contrary to petitioner's allegation, the parties were notified of the mediation more than five (5) months in advance. Likewise, nothing in the record supported the claims that the judge denied petitioner due process, relied on or imposed an unreasonable schedule, endorsed perjured testimony or coerced petitioner's acceptance of the settlement agreement. Last, Chief Judge Howard observed that the record provided no indication of counsel's reasons for withdrawal and explained that counsel's withdrawal does not suggest judicial misconduct.

Because there were no facts to support petitioner's allegations of judicial wrongdoing, Chief Judge Howard dismissed the misconduct complaint as unfounded, 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 improper motivation on the part of the judge, the Chief Judge dismissed petitioner's challenges to the substance of the court's rulings as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii); see also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into the question the correctness of a judge's ruling . . . , without more is merits-related.").

In the petition for review, petitioner alleges that Chief Judge Howard sought to protect the district judge and, therefore, was biased when he dismissed petitioner's misconduct complaint. Petitioner reiterates that the district judge was biased in favor of plaintiff, as is evidenced by the court's rulings, and colluded with the plaintiff in order to bankrupt petitioner. Petitioner repeats his allegations that the judge was hostile toward petitioner, endorsed perjured testimony and violated petitioner's right to due process.

The petition for review is baseless. First, petitioner provides no basis for his claim that Chief Judge Howard was improperly motivated in reviewing the misconduct complaint. This assertion amounts to nothing more than a challenge to the correctness of the Chief Judge's order of dismissal and, therefore, is not cognizable. See Rules of Judicial-Conduct, Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge without more is merits-related . . . . Thus, a [claim] challenging the correctness of a chief judge's determination to dismiss a . . . misconduct complaint would be properly dismissed as merits-related.").

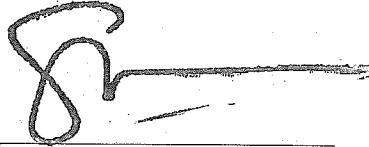
Petitioner offers no facts in the petition for review that would undermine Chief Judge Howard's determinations regarding the original misconduct complaint. Chief Judge Howard thoroughly reviewed the record and found no evidence of judicial bias or improper motive. Petitioner's allegations simply amount to disagreement with the substance of the court's rulings. Accordingly, the misconduct complaint was appropriately dismissed as not cognizable and as unfounded. See 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)(D).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-16-90005 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

12/19/2016

Date

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line extending to the right.

Susan Goldberg, Secretary