

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-16-90023

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

ORDER

ENTERED: FEBRUARY 7, 2017

Petitioner, a pro se plaintiff in a civil case that was closed a number of years ago, has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against the First Circuit magistrate judge who presided over the case.¹ Petitioner alleges that the magistrate judge discriminated against him because of his disability and wrongfully denied his requests to reopen the proceeding. Chief Judge Howard dismissed the complaint as frivolous and as not cognizable.

¹ This is petitioner's second misconduct complaint arising from the same litigation. In 2008, he filed a similar complaint against the same magistrate judge, as well as against two district judges and three circuit judges in connection with several related unsuccessful proceedings. Judge Selya dismissed that misconduct complaint as not cognizable and as baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See Order, Selya, C.J., In re: Judicial Misconduct Complaint Nos. 01-08-90023, 01-08-90024, 01-08-90025, 01-08-90026, 01-08-90027, and 01-08-90028, Oct. 16, 2008, at p. 4. The Judicial Council affirmed the order of dismissal. See Order, Judicial Council of the First Circuit, In re: Complaint Nos. 01-08-90023 - 01-08-90028, May 26, 2009.

Chief Judge Howard found that neither the misconduct complaint nor the reviewed record offered any evidence to support petitioner's allegations that the magistrate judge was biased or harbored illicit animus in connection with petitioner's proceeding. The record indicated that, following a bench trial to which the parties consented, the magistrate judge held that petitioner failed to establish the elements of his claim and entered judgment for the defendant. After petitioner filed multiple unsuccessful requests to reopen the case, the district court prohibited petitioner from making further such filings. Petitioner's appeals were also dismissed and the appellate clerk was similarly directed not to accept any further filings from petitioner. As the misconduct complaint was merely another attempt to challenge the magistrate judge's rulings in petitioner's original case, the Chief Judge dismissed it as not cognizable and as frivolous, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(B) and 11(c)(1)(C).

In the petition for review, petitioner reiterates the allegations that the magistrate judge was biased against him and improperly denied his motions to reopen his case. Petitioner also alleges that Chief Judge Howard wrongfully dismissed his misconduct complaint due to a conflict of interest.²

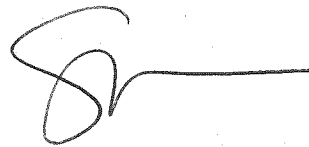
² Petitioner also makes vague claims against the judge who dismissed his previous misconduct complaint. See nte. 1, *supra*. Although presented with no basis in fact, these assertions are not addressed because that judge was not named in the pending matter.

The petition for review is baseless and is simply another attempt to reassert petitioner's disagreement with the magistrate judge's rulings in petitioner's terminated proceeding. Petitioner provides no facts to support the allegations that the magistrate judge was improperly motivated or that Chief Judge Howard dismissed the misconduct complaint because of a conflict of interest. Accordingly, the misconduct complaint was properly dismissed as not cognizable and as frivolous, pursuant to 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)(C).

Finally, petitioner should note that the filing of another misconduct complaint challenging these same judicial rulings will precipitate the issuance of an order to show cause. See Rules of Judicial-Conduct, Rule 10.

2/7/2017

Date



Susan Goldberg, Secretary