

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NOS. 01-19-90005, 01-19-90011, 01-19-90012, 01-19-90013, 01-19-
90014, 01-19-90015, 01-19-90016, AND 01-19-90017

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

ORDER

ENTERED: JANUARY 11, 2021

Petitioner, an incarcerated pro se litigant, has filed a petition for review of Chief Judge Howard's order dismissing his misconduct complaint, under 28 U.S.C. § 351(a), against four district judges and three magistrate judges in the First Circuit. Petitioner alleged judicial misconduct in connection with two habeas corpus and five civil rights cases over which the subject judges presided. Chief Judge Howard dismissed the complaint as baseless, as not cognizable, and as not indicative of misconduct.

In the original complaint, petitioner alleged that the judges conspired to "protect" respondents/defendants in petitioner's cases by refusing to consolidate his cases, tampering with his filings, "misconstru[ing] and discredit[ing]" his filings in rulings adverse to petitioner, and "maliciously" and "summarily" dismissing his cases. Petitioner

alleged that, by failing to consolidate his cases, the judges "abused" a federal statute, in order to assess duplicative filing fees, and made it "impossible" for him to manage his cases.

Petitioner further alleged that three of the district judges and two of the magistrate judges "maliciously and summarily" denied his motions for counsel, and that one of the district judges erroneously denied petitioner's motion to file additional complaints and failed to send him the order of dismissal issued in one of his civil rights cases.¹ Petitioner additionally alleged that the court delayed in ruling on a motion to reconsider and a notice of appeal that petitioner filed in one of his habeas proceedings, as well as on requests for injunctive relief that he filed in unspecified matters.

Petitioner requested various relief, including, but not limited to: the investigation, "suspension," and removal of one of the district judges; consolidation of his cases; return of his filing fees; and reassignment of his cases to another judge.

In dismissing the complaint, Chief Judge Howard first explained that the judicial misconduct complaint procedure does not provide for much of petitioner's requested relief and that none of the requested relief was available where, as here, petitioner's allegations were not substantiated by the record and were not cognizable. See 28 U.S.C. §

¹ Petitioner made allegations against court staff, including, but not limited to, that they failed to mail him documents. In the order dismissing this complaint, the Chief Judge noted that the judicial misconduct complaint process does not offer a mechanism for filing a complaint against judiciary staff, see 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 1, that the docket indicated that the court mailed to petitioner a copy of at least one of the orders at issue, and that, in any event, the conduct of court staff in exercising their administrative duties would not be attributable to the judge, see Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7.

351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20(b).

Chief Judge Howard determined that the record, including the misconduct complaint, the dockets of the proceedings, and the courts' orders, provided no support for petitioner's conclusory allegations of conspiracy, delay, or other wrongdoing by the judges. The Chief Judge observed that petitioner filed a petition for writ of habeas corpus against, among others, the prison at which he is incarcerated and a motion for injunctive relief (the first habeas case). The first district judge promptly denied without prejudice the motion for injunctive relief, explaining that petitioner failed to address the necessary factors. Shortly thereafter, the second district judge denied the petition for lack of subject matter jurisdiction in a several-page order.

Chief Judge Howard observed that petitioner filed a second petition for writ of habeas corpus (the second habeas case) and two civil rights cases (the first and second civil rights cases, respectively), all against the same parties. Without assessing a filing fee, the third district judge dismissed the second civil rights case as duplicative of the first.²

Chief Judge Howard next observed that petitioner filed additional motions to consolidate the proceedings and a motion to appoint counsel in the second habeas case, each of which the court denied for reasons provided on the record, including but not

² The Chief Judge noted that, despite petitioner's contention to the contrary, the docket indicates that the court mailed this dismissal order to petitioner.

limited to, that habeas and civil rights cases are procedurally different and thus not appropriate for consolidation, and failure to meet the applicable standard for the appointment of counsel. Petitioner filed a notice of appeal and a motion for reconsideration of the order dismissing the second habeas proceeding, the latter of which the second magistrate judge denied after the Court of Appeals rejected the appeal for lack of jurisdiction.

Chief Judge Howard further noted that petitioner filed additional motions in the civil rights cases seeking, among other things, to file three additional cases, to consolidate his cases, and for appointment of counsel. The court denied these motions, explaining that some of the cases which petitioner sought to consolidate were closed, consolidation was otherwise inappropriate, and petitioner did not need permission to file cases.

The Chief Judge observed that petitioner filed three additional civil rights cases against the United States (the U.S. civil rights cases), which he sought to consolidate with each other, as well as with his previous cases, and to have the consolidated proceeding reassigned to another judge, all of which the court denied. The court granted petitioner's motions for additional time to pay filing fees and to proceed in forma pauperis in each of these cases.³

Chief Judge Howard found that the complaint and the record provided no information to support the allegation that any of the subject judges conspired against

³ Since the dismissal of this misconduct complaint, the court granted defendants' motions to dismiss in the first civil rights case and the U.S. civil rights cases, respectively.

petitioner -- by not consolidating his cases, misconstruing his filings, assessing duplicative filing fees, or otherwise. Contrary to petitioner's allegations, the record demonstrated that the judges considered petitioner's numerous pleadings, issued reasoned rulings, and did not impose excessive or duplicative filing fees. See supra pp. 3-4. Therefore, Chief Judge Howard dismissed the complaint as baseless, pursuant to 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 judicial animus or other improper motive, Chief Judge Howard dismissed petitioner's objections to the courts' orders, including, but not limited to, the orders of dismissal and the denials of his motions to consolidate and for appointment of counsel, as not cognizable pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). 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."). See also id. Rule 11(c)(1)(B). The Chief Judge found that the same was true for petitioner's allegations of delay. See id. 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. . . .").

Finally, Chief Judge Howard found that, contrary to petitioner's allegation, the docket indicated that the court mailed to petitioner a copy of the order of dismissal in the second civil rights case, D.MA. No. 18-11564. See supra note 2. Further, because the

conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge, see Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7, the Chief Judge dismissed the claim as not indicative of misconduct pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A), and supra note 1.

In the petition for review, petitioner alleges that all of the subject judges engaged in "judicial malpractice, misconduct, and corruption [and] . . . abused their oaths, authority, and discretion," in presiding over his cases.⁴ Petitioner repeats the allegations that the judges unnecessarily "complicate[d]" petitioner's litigation, by refusing to consolidate his cases, charging him duplicative filing fees, and denying his motions for counsel and for injunctive relief, in order to "stifle" petitioner, to "protect" the respondents/defendants and other judges who have engaged in "misconduct and criminal activities," and to "cause [petitioner] to suffer additional medical injuries." Petitioner further alleges that the judges denied and dismissed his motions and cases based on "falsified medical records," and failed to address misconduct in cases that petitioner filed in other circuits and the poor healthcare he received in prison.

⁴ In his petition for review, petitioner includes, for the first time, allegations against another First Circuit district judge. Petitioner was notified that the Judicial Council would only consider claims against judges identified in the original complaint. Petitioner also includes allegations against others, including, but not limited to, federal judges of another circuit, state judges, a federal agency, and district court staff. As the First Circuit judicial misconduct complaint process applies only to First Circuit federal judges these allegations are not addressed. See 28 U.S.C. § 351, et seq., and Rules of Judicial-Conduct, Rules 1 and 7. See also supra pp. 5-6 ("[T]he conduct of court staff in exercising their administrative duties [is] not . . . attributable to the judge." (citing Lynch, C.C.J., Order, In Re: Complaint No. 01-15-90002, June 11, 2015, at p. 7)).

Petitioner further alleges that the district judge who presided over two of the U.S. civil rights cases excluded an addendum from petitioner's pleadings and dismissed claims against some defendants before they were served in order to "protect" defendants. Petitioner adds that the subject judges have improperly allowed government attorneys who have engaged in criminal conduct to represent respondents/defendants. Finally, petitioner seems to suggest that the subject judges allowed a federal agency to tamper with his mail.

The petition for review, like the original complaint, is frivolous. Petitioner offers no facts in the petition for review that would undermine Chief Judge Howard's determinations regarding the original misconduct complaint. There remains no evidence to support petitioner's claims that any of the subject judges conspired against him in order to interfere with or complicate his litigation, protect defendants, conceal others' wrongdoing, or otherwise to cause petitioner harm. As the Chief Judge explained, the record is replete with reasoned orders demonstrating consideration of petitioner's arguments. See supra pp. 3-5.

There is likewise no support for petitioner's newly asserted allegations that the district judge excluded materials from petitioner's pleadings or was improperly motivated in dismissing claims against certain defendants in two of the U.S. civil rights cases. Rather, the record indicates that the judge issued lengthy orders in these proceedings dismissing the claims for failure to state a claim upon which relief could be granted and for lack of jurisdiction, respectively. Finally, petitioner's newly asserted and conclusory

claims that the judges improperly allowed government attorneys to represent defendants or authorized interference with petitioner's mail are presented without any basis in fact.

As there was no evidence of improper motive, petitioner's continued objections to the substance and timing of the court's orders are not cognizable. See Rules of Judicial-Conduct, Rules 4(b)(1) and 4(b)(2). Finally, as Chief Judge Howard concluded, petitioner's unsupported allegation concerning the court's failure to send him an order of dismissal in one of his cases did not suggest misconduct. See supra p. 5-6. Therefore, Chief Judge Howard properly dismissed the complaint as baseless, as not cognizable, and as not indicative of misconduct. See 28 U.S.C. §§ 352 (b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(D).

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-19-90005, 01-19-90011, 01-19-90012, 01-19-90013, 01-19-90014, 01-19-90015, 01-19-90016, and 01-19-90017 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

In addition, petitioner should note that the filing of another frivolous judicial misconduct complaint may precipitate issuance of an order to show cause. See Rules of Judicial-Conduct, Rule 10(a) ("A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.").

January 11, 2021
Date



Susan Goldberg, Secretary