

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-19-90037

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

ORDER

ENTERED: JUNE 3, 2021

Petitioner has filed a petition for review of Chief Judge Howard's order dismissing his complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Petitioner alleged judicial misconduct in connection with the judge's denial of two motions that petitioner filed. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.¹

¹ This is petitioner's third misconduct complaint. In his first misconduct complaint, petitioner alleged that a district judge engaged in judicial misconduct in presiding over his criminal case. Then Chief Judge Lynch dismissed the complaint as baseless and as not cognizable, and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-08-90011 (July 17, 2008), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-08-90011 (Jan. 29, 2009). In his second misconduct complaint, petitioner alleged that three circuit judges engaged in misconduct in connection with the appeal of his criminal case. Then Chief Judge Lynch dismissed the complaint as baseless and as not cognizable, and the Judicial Council affirmed the order of dismissal. See Lynch, C.C.J. Order, In Re: Judicial Misconduct Complaint Nos. 01-10-90024 -- 01-10-90026 (March 21, 2011), and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint Nos. 01-10-90024 -- 01-10-90026 (Aug. 2, 2011).

Petitioner alleged that the subject judge improperly interfered in petitioner's criminal cases by denying two motions petitioner filed seeking relief from orders entered many years earlier in connection with his criminal proceedings. Petitioner contended that the judge "vindictively" denied petitioner's constitutional rights to due process, access to the courts, and free speech. Petitioner concluded that the judge "threaten[ed]" petitioner not to file motions in his criminal cases, and requested that the judge be investigated, prohibited from ruling in his cases, and directed to undergo evaluation and training.

Chief Judge Howard explained that, as an initial matter, the judicial misconduct complaint process does not provide for petitioner's requested relief where, as here, the claims were presented without any basis in fact and were not cognizable. See Rules of Judicial-Conduct, Rules 11, 19, and 20(b).

Chief Judge Howard determined that the record, including the misconduct complaint and the dockets and orders of the relevant proceedings, provided no basis for petitioner's conclusory allegations that the judge was improperly motivated in ruling on petitioner's motions or engaged in any other wrongdoing. According to the record, petitioner was indicted in two separate criminal cases. After pleading guilty in the first proceeding and a jury trial in the second matter, the district judges who had presided in the cases each sentenced petitioner to terms of imprisonment.² The Chief Judge further explained that several years later, petitioner filed, pro se, an unsuccessful petition to vacate his conviction and sentence, pursuant to 28 U.S.C. § 2255, in each of his cases.

² Neither of these district judges was the subject of the present misconduct complaint.

Because the judge who denied the habeas petition challenging petitioner's second criminal conviction determined that petitioner had made a host of frivolous arguments and filed a multitude of lengthy, incoherent, meritless, and duplicative motions, the court enjoined petitioner from filing additional pleadings without first obtaining prior written approval.

A number of years later, petitioner filed the motions at issue in this misconduct complaint. In the first of these motions, petitioner sought leave to file a motion requesting funds seized in connection with his first criminal case, and in the second motion, petitioner requested that the court vacate the order issued in the habeas proceeding enjoining petitioner's filing without prior approval. Both matters were docketed as miscellaneous cases and assigned to the subject judge, pursuant to local rule. The judge denied both motions and determined that petitioner failed to provide any basis for relieving petitioner from enjoinder.

Chief Judge Howard determined that petitioner's conclusory allegations of judicial wrongdoing were baseless, as petitioner provided and the record revealed no evidence to support the allegations that the judge interfered in his cases, threatened petitioner, or was improperly motivated in ruling on his motions. Chief Judge Howard determined that petitioner's cases were assigned to the judge in accordance with the court's procedure, and that the judge denied the motions, based on the record, explaining that petitioner failed to provide a basis for suspending the enjoinder on his filings. Therefore, Chief Judge Howard dismissed the complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and, as there was no evidence of improper conduct or motive, as not cognizable, pursuant

to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D), Rule 11(c)(1)(B), and 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 . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision.")

Alleging that Chief Judge Howard erroneously dismissed the misconduct complaint, petitioner repeats the claim that the judge improperly interfered with his criminal cases, citing the judge's orders denying his motions as purported evidence of the judge's impropriety. Petitioner additionally requests that Chief Judge Howard's order dismissing his misconduct complaint be vacated, that the subject judge be ordered not to interfere with any of petitioner's cases, and that "this case proceed forward."

The petition for review is meritless. First, the judicial misconduct complaint procedure does not provide for any of petitioner's requested relief where, as here, petitioner's allegations are not substantiated by the record and are not cognizable. See Rules of Judicial-Conduct, Rules 11, 19, and 20(b). Petitioner provides no information that undermines Chief Judge Howard's disposition of the misconduct complaint. The judge's orders denying petitioner's motions do not substantiate petitioner's claims of wrongdoing against the judge or indicate that Chief Judge Howard improperly dismissed those claims. The petition, like the underlying complaint and record of the proceedings, contains no facts indicating that the judge improperly interfered in petitioner's cases or

engaged in any other wrongdoing. Therefore, Chief Judge Howard properly dismissed the misconduct complaint as baseless, and, as it derived exclusively from petitioner's challenge to the judge's orders, 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, Rule 11(c)(1)(D), Rule 11(c)(1)(B), 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 Thus, a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related").

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint No. 01-19-90037 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

June 3, 2021

Date



Susan Goldberg, Secretary