

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90001

BEFORE
Thompson, Barron, and Gelpí, Circuit Judges
Mastroianni and Arias-Marxuach, District Judges

ORDER

ENTERED: JANUARY 14, 2022

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 his two criminal cases and related civil case, over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

In his original complaint, petitioner alleged that, in presiding over petitioner's cases, the judge was biased against and hostile toward petitioner, "advocat[ed] on behalf of the prosecution" in the criminal proceedings, in violation of Canons 3 and 3A of the

Code of Conduct for United States Judges (Code of Conduct)¹, prejudged the merits of the cases, and denied petitioner due process.

Specifically, petitioner asserted that the judge improperly interfered in plea negotiations by urging petitioner to consider a plea. Petitioner also alleged that the judge did not address petitioner's claims of ineffective assistance of counsel included in letters that petitioner purportedly submitted to the court even though counsel allegedly said during a hearing that he "hope[d] that [petitioner] rot[s] in jail."

Petitioner contended that the judge improperly dismissed petitioner's first criminal case without ruling on pending motions and violated petitioner's "First Amendment Right to Redress and . . . Fourth Amendment Right regarding the Suppression Hearing." Petitioner added that the judge improperly refused to consider additional Fourth Amendment claims and wrongfully dismissed petitioner's tort claim without a hearing. Petitioner concluded that the judge should have recused from petitioner's cases and requested that the judge be removed from his cases.²

Chief Judge Howard observed that, as a preliminary matter, the judicial misconduct process does not provide an avenue for obtaining relief in a case, including the removal of a judge from pending litigation. See 28 U.S.C. § 351, et seq., and Rules

¹ Canon 3 provides, in part, that "a judge should perform the duties of the office fairly, impartially and diligently." Canon 3A and its subparts set forth standards to which a judge should adhere while performing adjudicative responsibilities. See Code of Conduct for United States Judges (Code of Conduct), Canon 3.

² Petitioner included apparent allegations against the prosecutors in his criminal cases which Chief Judge Howard did not address because the judicial misconduct complaint procedure applies only to federal judges. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 1(b).

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

The Chief Judge concluded that the reviewed record, including the misconduct complaint and the dockets of the relevant proceedings, was devoid of any information suggesting that the judge was biased or otherwise engaged in misconduct in presiding over petitioner's cases.

Chief Judge Howard observed that, after being indicted, petitioner, who was represented by an Assistant Federal Public Defender, filed a motion to suppress evidence, which the government opposed. The judge granted petitioner's motion to reply to the government's opposition and, subsequently, held a multiple-day hearing on the motion to suppress, during which prosecution and defense witnesses, including petitioner, testified, counsel for the parties argued extensively, and the judge took the matter under advisement.

Chief Judge Howard further observed that petitioner's attorney filed a motion to withdraw at petitioner's request, on which the court held a hearing, a portion of which was held *ex parte* over the government's objection. At the hearing, the judge heard from petitioner in full, allowed petitioner's attorney to withdraw, and authorized petitioner to supplement his motion to suppress once new counsel was appointed. Petitioner did not supplement the motion to suppress following the appointment of new counsel, and the judge denied the motion on multiple grounds in a several-page opinion.

Chief Judge Howard further observed that, following the withdrawal of petitioner's second attorney and subsequently appointed standby counsel, petitioner filed, pro se, over a dozen motions over the next several months. The judge held a hearing and denied the motions, explaining that they were based on the same underlying issues that the court had decided in denying the motion to suppress.

Chief Judge Howard next observed that the judge held a hearing at which the judge reappointed standby counsel for petitioner, see supra, the government offered a plea agreement, and the judge explained the charges and applicable maximum penalties, the terms of the agreement, and that the court would not engage in plea negotiations in any criminal case. Petitioner indicated that he objected to a provision in the plea agreement which the government subsequently offered to remove, and the judge explained that, in the court's opinion, it was in petitioner's best interest to accept the plea agreement, but that it was petitioner's choice whether to do so.

The Chief Judge observed that petitioner indicated that he would accept the plea agreement if the prosecution agreed to an admission on the record regarding law enforcement officers' conduct. The judge responded that the court had tried appointing attorneys for petitioner, that petitioner had a right to go forward with trial, but that, in the court's opinion, it was not in petitioner's best interest to do so. Petitioner objected to the judge's remarks and did not accept the plea agreement.

Chief Judge Howard next observed that, after the case was scheduled for trial, petitioner filed, pro se, multiple pleadings, including, but not limited to, motions to

dismiss the indictment. The government subsequently filed a separate indictment against petitioner involving mostly the same charges and a motion to dismiss the first criminal case, which the judge allowed.

Chief Judge Howard further observed that, while petitioner's first criminal case was pending, petitioner filed, pro se, a civil rights case challenging his arrest. Defendants moved to dismiss, and, in a hearing on the motion, the judge allowed certain claims to proceed and dismissed petitioner's remaining claims based, in part, on collateral estoppel. Petitioner filed amended civil complaints, which the court dismissed on defendants' motion, pursuant to collateral estoppel, as petitioner's Fifth Amendment claims were based on the same issues raised in the motion to suppress, and with regard to petitioner's remaining claim, for failure to state a claim upon which relief can be granted.

Based on this review of the record, Chief Judge Howard determined that there was no evidence that the judge was biased or improperly motivated in presiding over petitioner's cases, violated the Code of Conduct,³ advocated on behalf of the prosecution, was hostile to petitioner, inappropriately prejudged the merits of the case, denied petitioner's Constitutional rights, or engaged in any other wrongdoing. Instead, the

³ See Code of Conduct, Rule 1 Commentary (While the Code of Conduct may "provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364), [n]ot every violation of the Code should lead to disciplinary action."), and Rules of Judicial-Conduct, Commentary to Rule 4 ("While the Code[of Conduct's] Canons are instructive, ultimately the responsibility for determining what constitutes cognizable misconduct is determined by the [Judicial Conduct and Disability] Act and these Rules . . ."). Chief Judge Howard determined that in the present matter, there was no indication that the judge violated the Code of Conduct, let alone engaged in misconduct.

Chief Judge found that the judge held multiple hearings, considered the substance of petitioner's claims and defenses, and issued extensive, reasoned rulings, including some in petitioner's favor. See supra pp. 3-5.

The Chief Judge further determined that the record did not support the claim that the judge improperly interfered in petitioner's plea negotiations. The hearing transcript indicated that the judge explicitly confirmed that petitioner understood the charges and maximum penalties, the terms of the proffered plea agreement, and that the decision to accept or the reject the plea agreement was petitioner's alone. Chief Judge Howard explained that the judge's advice to petitioner to consider seriously the plea agreement and expression of views on the merits of the case were in no way indicative of bias or other wrongdoing. See Boudin, C.C.J., Order, In re Judicial Misconduct Complaint No. 444, January 23, 2007, at pp. 3-4, citing In re Marisol Martinez-Catala, 129 F.3d 213 (1st Cir. 1997) ("It is well settled that judges are entitled to form views about the merits, and to express them, during the course of the case so long as the judgements rest on the evidence and arguments in the proceeding itself Leaving aside extraordinary circumstances, the expression of views by the judge on the merits . . . [does not] constitute bias.").

The Chief Judge also determined that there was no evidence of judicial "hostility." See Rules of Judicial-Conduct, Rule 4(a)(2)(B) ("Cognizable misconduct . . . includes . . . treating litigants . . . in a demonstrably egregious and hostile manner"). The Chief Judge observed that, throughout the multiple hearings in petitioner's cases, the judge was

polite and respectful, see supra pp. 3-5, and there was nothing in the record suggesting improper judicial motivation or "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 p. 6, quoting In Re: Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 4, 2011).

Further, the Chief Judge determined that petitioner's allegation that the judge failed to address petitioner's ineffective assistance of counsel claim was inconsistent with the record, which did not reflect petitioner's submission of any letters complaining about his counsel, let alone counsel's purported statement that he "hope[d] that [petitioner] rot[s] in jail."⁴ Accordingly, Chief Judge Howard dismissed the misconduct 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).

The Chief Judge determined that, as there was no evidence of bias or improper judicial motive, petitioner's challenges to the court's orders - including, but not limited to, the dismissal of his first criminal case (without ruling on pending motions) and the dismissal of petitioner's civil rights case without a hearing - were not cognizable. 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

⁴ The Chief Judge noted that, at the ex parte hearing, petitioner expressed his concerns with his counsel, and the judge allowed counsel to withdraw at petitioner's request. See supra p. 3.

cognizable to the extent that it calls into question the merits of the decision."), and id. 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."). Therefore, the Chief Judge dismissed the complaint as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

In the petition for review, petitioner alleges that Chief Judge Howard "turned a blind eye" and "misrepresented . . . facts presented" in the misconduct complaint, and in doing so, improperly "refus[ed] to initiate appropriate action" regarding the judge's purported misconduct and violated Canon 3A of the Code of Conduct.⁵

Petitioner repeats the allegations that the judge was biased against petitioner and "align[ed]" with the government, denied petitioner the right to be heard on "any" Fourth Amendment claims, and violated petitioner's First Amendment and Due Process rights and the Code of Conduct, generally. Petitioner realleges that the judge failed to address petitioner's ineffective assistance of counsel claims, including those in letters petitioner purportedly sent to the court.⁶ Petitioner adds that the judge "misrepresented [] facts," "made a deliberate fabrication," and violated Canons 2A and 3 of the Code of the Conduct.⁷

⁵ Canon 3A and its subparts set forth standards to which a judge should adhere while performing adjudicative responsibilities. See Code of Conduct, Canon 3A.

⁶ Petitioner includes a letter addressed to the judge, a "notice" to the court which appears to include a time and date stamp, a letter to the Clerk's Office which appears to include a time and date stamp, and letters to his attorney, each of which discusses ineffective assistance of counsel. As Chief Judge Howard observed, these letters do not appear on the docket of the proceedings and were not provided with the original misconduct complaint.

⁷ Canon 2A provides that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," and Canon 3 provides, in part, that

The petition for review is meritless. Petitioner offers and the record provides no information that supports the allegations that Chief Judge Howard ignored or "misrepresented" the allegations in the misconduct complaint, violated the Code of Conduct,⁸ or inadequately reviewed petitioner's misconduct complaint. The record demonstrates that Chief Judge Howard thoroughly reviewed both the misconduct complaint and the underlying record of petitioner's litigation in finding no evidence that the judge was biased, violated the Code of Conduct, denied petitioner his Constitutional rights, including his right to be heard on his Fourth Amendment claims, failed to address petitioner's ineffective assistance of counsel claims, or engaged in any other wrongdoing. See supra pp. 3-5, and Rules of Judicial-Conduct, 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").

As to the original allegations, there remains no evidence of bias or other improper motivation by the judge. As Chief Judge Howard observed, the judge held multiple hearings, considered the substance of petitioner's claims and defenses, and issued extensive, reasoned rulings, including some in petitioner's favor. See supra pp. 3-5.

"a judge should perform the duties of the office fairly, impartially and diligently." Code of Conduct, Canons 2A and 3, respectively.

⁸ See supra note 3.


With respect to petitioner's repeated allegation that the judge ignored petitioner's ineffective assistance of counsel claims, the newly provided letters, see supra note 6, do not undermine Chief Judge Howard's determination. The record demonstrates that, regardless of whether the judge received the alleged correspondence (of which there remains no indication in the record), the court heard from petitioner in full on all issues and was provided the relief he requested regarding his attorneys. See supra pp. 3-4.

There is likewise no support in the record for petitioner's newly asserted allegations that the judge "misrepresented [] facts" or violated the Code of Conduct in dismissing petitioner's Fourth Amendment claims. The judge provided petitioner a full opportunity to be heard on those claims, including holding a multiple-day hearing on petitioner's suppression motion, at which petitioner testified, and authorizing petitioner to supplement his motion. See supra p. 3. The judge denied this motion on multiple grounds in a lengthy reasoned opinion, and subsequently denied petitioner's related pro se motions and civil claims, as they were based on the same underlying issues as the motion to suppress, and as barred by collateral estoppel, respectively. See supra pp. 4-5.

Therefore, Chief Judge Howard properly dismissed the misconduct 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 remains no evidence of judicial animus or improper judicial motive, petitioner's continued objections to the substance of the court's orders are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A) and Commentary to Rule 4.

For the reasons stated, the order of dismissal issued in Judicial Misconduct
Complaint No. 01-20-90001 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

January 14, 2022
Date



Susan Goldberg, Secretary