

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90002

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

ORDER

ENTERED: FEBRUARY 17, 2022

Petitioner, a pro se litigant, 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 petitioner's civil cases, over which the judge presided. Chief Judge Howard dismissed the complaint as baseless and as not cognizable.

In the original complaint, petitioner alleged that the judge was "incompetent" and issued a series of improper decisions in his cases, all filed in connection with petitioner's mortgage loan and promissory note. Petitioner asserted that the judge did not act maliciously, but was biased and reiterated defendants' arguments out of "carelessness."

Petitioner alleged that the judge improperly accepted defendants' arguments that they had made technical mistakes, had not engaged in deceptive business practices, and were not required to act in good faith. Petitioner further challenged the judge's rulings as contrary to legal precedent, including the court's denial of petitioner's request for

injunctive relief and dismissal of certain of petitioner's claims as barred by res judicata. Petitioner also alleged that the judge incorrectly ruled that defendants did not have to comply with a district court local rule because petitioner was pro se. Petitioner complained of delay, asserting that the judge's ruling on one of his motions for reconsideration had been pending "indefinitely." Finally, petitioner alleged that he was denied his "day in court" because petitioner's cases were dismissed without any hearing or litigation. Petitioner requested vacatur of the judge's rulings and reassignment of his cases to another judge.¹

Chief Judge Howard dismissed the misconduct complaint as baseless and as not cognizable. The Chief Judge first explained that the judicial misconduct complaint procedure does not provide an avenue for vacating a judge's rulings or reassigning cases. See 28 U.S.C. § 351, et seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Chief Judge Howard determined that the reviewed record, including the misconduct complaint and attachments, the district court dockets and orders, and related state court records, provided no evidence for petitioner's allegations of "incompetence," bias, or other judicial wrongdoing.

The Chief Judge thoroughly summarized the record of the proceedings in the Order of dismissal. See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint

¹ Petitioner included allegations of wrongdoing against one of defendants' attorneys 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, Rule 1(b).

No. 01-20-90002, November 24, 2020. In short, petitioner filed a series of actions against various mortgage lenders. In the first case, which defendants removed to the district court from state court, the court held a hearing on petitioner's requests to remand the case and gave him multiple opportunities to amend his complaint. After denying petitioner's motion for default judgment against one defendant for failure to comply with a local rule, the judge issued a multiple-page order dismissing the case on defendants' motion, finding, among other things, that petitioner failed to establish that defendants had violated the governing state law in part because of the absence of a legally required written loan modification agreement memorializing the alleged oral agreement between petitioner and a defendant.

When petitioner filed a second case in state court in connection with his mortgage, defendants removed the second case to federal court, and the judge dismissed this proceeding for failure to state a claim, lack of standing, and failure to complete service.

While petitioner's first and second cases were pending, petitioner filed a third proceeding against many of the same defendants, this time in federal court, for improper debt collection practices, among other things. In two lengthy orders, the judge granted most of defendants' motions to dismiss, finding that the "good faith" provision in the mortgage document had not been violated. After holding a hearing and ordering further briefing on one of petitioner's claims, the judge dismissed the claim on the ground that defendant's offer of a loan modification was not prohibited by federal law.

Approximately two years later, petitioner filed a fourth case in which petitioner challenged the validity of his mortgage assignments under state court precedent. Defendants again removed the case from state to federal court, and petitioner moved to remand and sought an evidentiary hearing on a motion for a preliminary injunction enjoining a scheduled foreclosure, arguing unlawful service of a foreclosure notice. Following a hearing on defendants' motion to dismiss, the judge denied petitioner's request for remand and for a preliminary injunction, finding that petitioner failed to show a reasonable likelihood of success on the merits under governing caselaw and failure to support the claim of unauthorized service of the foreclosure notice.²

The judge subsequently consolidated petitioner's fourth case with a fifth proceeding filed against the same defendants. After a hearing, at which all parties presented arguments regarding defendants' motions to dismiss, the judge dismissed the consolidated cases in a lengthy order, finding certain of petitioner's claims barred by res judicata, and rejecting other claims for various reasons, including those underlying the court's order denying petitioner's request for preliminary relief.³

Chief Judge Howard determined that the reviewed record failed to substantiate petitioner's allegations that the judge exhibited bias, incompetence, or other wrongdoing in presiding over his cases. The Chief Judge observed that the judge's numerous detailed

² The Chief Judge noted that the record suggested a possible misunderstanding between the court and petitioner on which entity was entitled to serve the foreclosure notice, but determined that, given the multiple grounds for the court's order denying the injunctive relief, any such misunderstanding would be immaterial to both the resolution of the case and to the resolution of the pending matter.

³ The judge denied petitioner's motion for reconsideration of the order of dismissal.

and reasoned orders, issued over a number of years in petitioner's multiple proceedings, demonstrated that the judge carefully considered and liberally construed petitioner's pleadings, and cited to applicable caselaw and procedural rules.

The Chief Judge also found that, contrary to the claim that the judge denied petitioner access to court or dismissed his proceedings without any hearing or litigation, the record demonstrated that the judge held multiple hearings, at which petitioner appeared and presented his arguments, and repeatedly allowed petitioner to amend his pleadings throughout the litigation. As Chief Judge Howard found petitioner's allegations to be wholly unsubstantiated by the record, he 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 Chief Judge Howard found no evidence of illicit judicial motivation, he rejected petitioner's objections to the courts' rulings -- including those that allegedly reiterated defendants' arguments, were contrary to established precedent, improperly relied on res judicata, or misinterpreted rules or facts -- as not cognizable.⁴ 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

⁴ The Chief Judge noted that, although not necessary for the dismissal of the misconduct complaint, the judge correctly explained the relevant local rule. Chief Judge Howard further observed that alleged factual errors alone do not constitute misconduct. See supra note 2; and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90016, April 16, 2014, at p. 5 (alleged minor set of errors did no more than call into question correctness of judge's ruling and did not constitute cognizable misconduct).

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.").

Chief Judge Howard similarly dismissed petitioner's allegation of delay in the judge's ruling on his motion for reconsideration. 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 . . ."). Accordingly, the complaint was dismissed, 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 asserts that Chief Judge Howard should have recused from handling petitioner's misconduct complaint because the judge was a member of the appellate panel that dismissed several of petitioner's appeals.

In a lengthy submission detailing and rearguing the claims presented in his district court cases and in his misconduct complaint, petitioner repeats his allegations against the judge, including the assertion that the judge's rulings were contrary to state law and established precedent. Petitioner identifies the rulings with which he takes issue including, but not limited to the orders misapplying the local rule and dismissing petitioner's first case, the order finding that petitioner lacked standing in his second proceeding, the order dismissing petitioner's fourth and fifth cases based on res judicata, and orders misapplying state laws and precedent.⁵

⁵ Petitioner objects to Chief Judge Howard's description of one of petitioner's cases, asserting that his second proceeding was the first time that petitioner challenged the mortgage assignment so that the Chief Judge's use of the

Petitioner contends that the judge was negligent by accepting the defendants' "false pleadings that lacked legal and factual merits." Asserting a conspiracy between debt collectors and the district court "to authenticate fraudulent mortgage assignments," petitioner alleges that the judge gave "blind deference" to defendants because of petitioner's pro se status. Petitioner contends that the judge held a hearing on one count of the third case, but improperly dismissed all of petitioner's other causes of action without any hearing. Finally, petitioner reasserts allegations of delay, contending that his first two cases and the fourth case remained "dormant" for many months and that he had to seek relief in multiple courts because of the judge's delay in these matters.

The petition for review is meritless. As an initial matter, Chief Judge Howard's involvement in petitioner's appeals does not give rise to a conflict of interest or other basis for questioning the Chief Judge's impartiality in considering petitioner's misconduct complaint. See Judicial Conference of the United States Committee on Judicial Conduct and Disability, Memorandum of Decision, In Re: Complaint of Judicial Misconduct No. 09-01, October 26, 2009, at pp. 21-22 ("If under all of the circumstances, including prior knowledge of the case and even a previously held opinion, the judge believes that he or she can be 'fair minded' in his or her participation, recusal is not warranted and the judge should fulfill his or her duty to participate [in the misconduct matter]."(citation omitted)).

word "again" in the order of dismissal was inaccurate, and that the finding that this case was dismissed for failure to complete service of process was "not exactly the case." See Howard, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-20-90002, November 24, 2020, at p. 3. This objection has no impact on the disposition of the misconduct proceeding.

Petitioner offers no information indicating that the judge was biased or improperly motivated, either because petitioner was pro se or for any other reason, or that the judge engaged in any other wrongdoing in presiding over petitioner's cases. As Chief Judge Howard determined, the record demonstrates that the judge considered the merits of petitioner's many claims, issuing clear, multiple-page orders that detailed the court's reasoning. See supra pp. 3-5. Petitioner's disagreement with the court's orders, including the allegations that the judge was negligent by relying on defendants' arguments, or misapplied state law and precedent, does not alone support a claim of bias or misconduct.


Further, Chief Judge Howard properly found that the judge held multiple hearings, at which petitioner appeared and presented his arguments. See supra p. 5. A civil plaintiff has no automatic right to a hearing on every cause of action, and the record establishes that, over a number of years, the court afforded petitioner a full and fair opportunity to present and defend his many claims, both in writing and in person. See supra pp. 3-5. Finally, where, as here, there is no evidence of improper motive, petitioner's allegation of judicial delay in handling his proceedings is not cognizable. See Rules of Judicial-Conduct, 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. . . .").

Therefore, Chief Judge Howard properly dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28

U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint No. 01-20-90002 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

February 17, 2022
Date



Susan Goldberg, Secretary