

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-20-90013

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

ORDER

ENTERED: AUGUST 24, 2022

Petitioner, a pro se litigant, has filed a petition for review of the order issued by then Chief Judge Howard (referred to as "Chief Judge") dismissing petitioner's complaint, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. Petitioner alleged judicial misconduct in connection with his civil case over which the judge presided. Chief Judge Howard dismissed the complaint as frivolous and as not cognizable.

In the original complaint, petitioner challenged the judge's order remanding his case to the defendant federal agency and asserted that the defendant "play[ed]" a "[e]gal game" with the judge. Petitioner contended that his "case should [have gone] forward, not backwards" and that "there should [have been] a simpler way to solve [his] case."

Petitioner requested a jury trial and the appointment of counsel.¹

¹ In the complaint, petitioner seemed to allege that clerk's office staff delayed his appeal of the subject judge's order remanding the case to the federal agency and did not answer his telephone calls. Chief Judge Howard explained that petitioner provided, and the record included, no information to support these claims, and that the conduct of court staff in exercising their administrative duties would not, in any event, be attributable to the judge or otherwise appropriate for resolution by means of the judicial misconduct process. See, e.g., Lynch, C.C.J., Order, In Re:

Chief Judge Howard explained that, as an initial matter, the judicial misconduct procedure does not provide an avenue for requesting a jury trial or counsel in an underlying proceeding. 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.

The Chief Judge summarized the record and determined that the record, including the misconduct complaint and the docket of the underlying proceeding, provided no basis for petitioner's conclusory allegations of judicial misconduct. Petitioner filed a civil complaint, challenging the defendant federal agency's rejection of petitioner's request for a waiver of the agency's determination that petitioner had received funds to which he was not entitled. The agency filed a motion to reverse its decision and remand the matter to the agency for further proceedings, explaining that the decision had been based on a miscalculation and that remand could result in a more favorable outcome to petitioner. Petitioner objected to the motion and requested a hearing. The judge granted defendant's motion and remanded the matter to the agency, pursuant to the governing statute.

Chief Judge Howard concluded that petitioner failed to allege any facts and the record provided no evidence suggesting that the judge was improperly motivated in remanding the matter, pursuant to the applicable federal law, or otherwise in presiding over petitioner's case. See supra p. 2. Accordingly, Chief Judge Howard dismissed the misconduct complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also

Complaint No. 01-15-90002 (June 11, 2015), p. 7; 28 U.S.C. § 351, et seq.; and Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Rules of Judicial-Conduct, Rule 11(c)(1)(C). The Chief Judge further determined that, as there was no evidence of improper judicial motivation, petitioner's disagreement with the judge's order was not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii) and Rules of Judicial-Conduct, Rule 11(c)(1)(B); see also 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 . . . or improper conduct . . . the complaint is not cognizable to the extent that it calls into question the merits of the decision.").

In the petition for review, petitioner requests that Chief Judge Howard's order of dismissal be "reversed" because the Chief Judge did "no[t] see [petitioner's] side of the story." Petitioner reasserts that petitioner's "case should go forward, not backwards" and that "there should be a simpler way to solve [his] case." Petitioner asserts that defendant should be ordered to pay money owed to petitioner and reiterates his request for a jury trial. Petitioner states that he has no "protection" from the government because he is "no[t] rich" and does not have a lawyer to represent him.

The petition for review is meritless. As a preliminary matter, the judicial misconduct complaint process does not provide an avenue for obtaining relief in a case, including an order that defendant pay a monetary award to petitioner or a jury trial. See 28 U.S.C. § 351, et seq.; and Rules of Judicial-Conduct, Rules 11, 19, and 20.

Petitioner provides no information to support the allegation that Chief Judge Howard improperly dismissed the misconduct complaint. To the contrary, the order of


dismissal demonstrates that Chief Judge Howard thoroughly and accurately reviewed both the misconduct complaint and the records of petitioner's proceeding in dismissing the complaint. See Rules of Judicial-Conduct, Commentary to Rule 4 ("Any allegation that calls into question the correctness of an official action of a judge -- without more -- is merits-related [A] complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related. . . .").

The record remains devoid of evidence that the subject judge was improperly motivated in presiding over petitioner's case. Therefore, Chief Judge Howard properly dismissed the misconduct complaint as frivolous and as not cognizable, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(iii) and 352(b)(1)(A)(ii), respectively. See also Rules of Judicial-Conduct, Rule 11(c)(1)(C) and 11(c)(1)(B), respectively.

For the reasons stated, the order of dismissal issued in Judicial Misconduct Complaint No. 01-20-90013 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

August 24, 2022

Date



Susan Goldberg, Secretary