JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 483
(NO. 01-08-90006)

BEFORE

Selya and Lipez, Circuit Judges
Smith, Woodcock, and Delgado-Colón, District Judges

ORDER

ENTERED: DECEMBER 9, 2008

Petitioner, a pro se litigant, has filed a petition for review of then Chief Judge Boudin's order dismissing his complaint of judicial misconduct under 28 U.S.C. § 351(a) against a bankruptcy judge in the First Circuit. The petitioner originally alleged that the judge engaged in misconduct in presiding over the petitioner's bankruptcy proceedings.

The petitioner alleged that the judge was "corrupt" in that he "just rubber-stamp[ed] whatever the trustee and lawyers put before him." The petitioner asserted that the judge improperly accepted the perjured testimony of an unidentified attorney who had failed to provide "critical evidence." The petitioner next contended that the judge improperly dismissed the petitioner's attorney shortly after he had been retained and then ignored "solid evidence" of this attorney's "malfeasance." The petitioner also suggested that the judge improperly redesignated his cases from Chapter 11 to Chapter 7 proceedings.

Chief Judge Boudin dismissed the complaint. As an initial matter, the Chief Judge

observed that the petitioner presented numerous allegations of wrongdoing by town officials, attorneys, the trustee, and others that were not amenable to consideration under the judicial misconduct statute. See 28 U.S.C. § 351, et. seq., and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 4.

Based upon a review of the complaint, the dockets and the court's orders, the Chief Judge summarized the chronology of the proceedings, as follows. The petitioner filed both petitions in late 2005. Early the next year, the judge authorized the employment of counsel on behalf of the petitioner in both of the cases and, thereafter, granted the trustee's motion to convert the proceedings from Chapter 11 to Chapter 7.

The petitioner subsequently appealed pro se to the Bankruptcy Appellate Panel (BAP) contending that his attorney had wrongfully authorized the sale of the petitioner's property. The petitioner then filed several motions pro se and, in May, 2006, the petitioner's counsel sought leave to withdraw. After a hearing on the outstanding motions, the judge allowed counsel's motion to withdraw, denied several of the petitioner's pro se motions to dismiss the claims of other creditors, and extended the time for the trustee to evaluate the contract providing for the sale of the petitioner's property.

After another hearing in August of 2006, the judge ordered payment of counsel's fee and denied the petitioner's motions to dismiss the cases. In November of 2006, the trustee filed a motion requesting authorization to sell the petitioner's property. The petitioner objected, contending that his attorney knew that there was never a valid purchase and sale agreement on the property. The petitioner apparently included with his objection an audio recording of the oral argument in state court and concluded that "this [was] a clear case of collusion and

malfeasance [by his attorneys]."

After a hearing on the trustee's motion to sell the property, the judge issued a lengthy memorandum summarizing the history of the petitioner's litigation in state court (in which he was sued for alleged failure to convey title to his property in accordance with the purchase agreement), and making detailed findings and orders effectuating the sale and transfer of the property. The petitioner subsequently filed another motion to dismiss (asserting that the trustee had misled the court concerning the petitioner's acquiescence to the proposed sale) which the court summarily denied.

In March of 2007, the court ordered the petitioner's proceedings consolidated and, in May, the judge again denied the petitioner's request for reconsideration of the court's orders as "repetitive of previous requests . . . all of which have been denied." Finally, in December, 2007, the petitioner sought the judge's recusal, claiming that he had conspired with counsel and misapplied the law. The judge denied this motion, and the petitioner filed multiple appeals.

Based upon his review of the record--including the docket, pleadings and court orders issued in both of the petitioner's cases--Chief Judge Boudin determined that there were no facts that corroborated the charges that the judge exhibited bias in his handling of the cases or conspired with counsel, or with the trustee, to subvert the petitioner's rights. The Chief Judge observed that the petitioner was effectively seeking to relitigate the validity of the agreement to sell his property, an issue that was resolved in state court. Chief Judge Boudin explained that, according to the record, it was the judge's opinion that the sale of the property was "in the best interests of the Debtor's Bankruptcy estate and should be approved . . . ." As there was no information supporting the claim that the judge intentionally ignored relevant evidence or

improperly acceded to the claims of the trustee or counsel, the Chief Judge dismissed the complaint pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial Misconduct, Rule 11(c)(1)(D).

As there was no evidence of improper judicial motivation, insofar as the complaint reflected the petitioner's disagreement with rulings entered by the court, the Chief Judge also dismissed it as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B). Nor, the Chief Judge noted, did the judge's denial of the petitioner's motion for recusal suggest judicial misconduct within the meaning of the statute. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

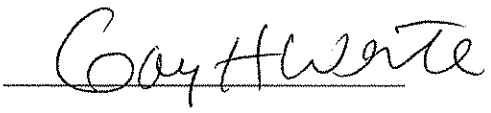
The petition for review consists exclusively of a copy of an apparent realty trust, executed in 1977, that the petitioner allegedly "set up for [his] ex-wife and three daughters." The petitioner states that the trustee unlawfully sold the land designated in the trust (and five other acres "that were not publicized") and that the judge failed to "redress this criminal activity," instead "approv[ing the] theft of [the petitioner's] daughters' land."

The petition for review is without merit. The petitioner continues to point to nothing besides decisions with which he disagrees as purported evidence of misconduct. The trust document supplied by the petitioner does not suggest that the judge mishandled the petitioner's cases. Moreover, Chief Judge Boudin's review of the record revealed no evidence of improper judicial motive, bias or collusion. Since the Chief Judge issued the order of dismissal, the court has approved the final sale of a parcel of the relevant property to a specified buyer, and petitioner's appeal of this order to the BAP was dismissed as not timely.

While it is conceivable that a court's decision could be so "extraordinary a departure from

the usual course" that it might, with other direct evidence, be suggestive of misconduct, see Boudin, C.C.J. Order, In Re Complaint No. 309, October 17, 2001, at 7, this is not such a case. Absent evidence of bias or malice, the exclusive avenue available for challenging the substance of a court's orders is to appeal--an alternative which the petitioner has thoroughly, albeit so far unsuccessfully, exhausted.[1] Accordingly, as neither the complaint, the petition for review, nor the reviewed record contain any facts in support of the charges that the judge engaged in misconduct in connection with the petitioner's proceedings, the complaint was appropriately dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 483 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).



Gary H. Wente, Secretary

[1]Court records indicate that the petitioner has filed seven appeals with the BAP and eight appeals to the Court of Appeals.