

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-08-90035

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BEFORE

Torruella, Boudin, and Howard, Circuit Judges  
McAuliffe and Woodcock, District Judges

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ORDER

ENTERED: AUGUST 17, 2009

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Petitioner, a pro se incarcerated litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a chief district judge.<sup>1</sup> The petitioner alleged that the district court does not provide prisoners with forms on which to file civil rights actions under 42 U.S.C. § 1983, United States Department of Justice Forms 285 (USM-285), for documenting proper service of process, or hard copies of the court's local rules of civil procedure. The petitioner surmised that the court's failure to do so demonstrates "conduct prejudicial to the effective and expeditious administration of the business of the courts" by the chief district judge.

This misconduct complaint was the fourth filed by the petitioner. The petitioner filed two

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<sup>1</sup>The petitioner filed the complaint against the chief district judge and "all of the judges and magistrates of the [district court]" but, because only the chief judge was properly identified, the complaint was accepted only against him. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 6.

complaints against a district judge in 2007, Complaint No. 469, on July 18, 2007, and Complaint No. 478, on December 11, 2007, for alleged misconduct in connection with the petitioner's multiple civil proceedings. Then Chief Judge Boudin dismissed both matters, and the Judicial Council affirmed the order of dismissal in connection with Complaint No. 478.<sup>2</sup> See Boudin, C.C.J., Order, In re: Complaint No. 469, September 19, 2007, Boudin, C.C.J., Order, In re: Complaint No. 478, February 20, 2008, and Judicial Council of the First Circuit, Order, In re: Complaint No. 478, August 13, 2008.

The petitioner filed his third complaint, No. 01-08-90029, against the same district judge, on August 11, 2008, alleging further misconduct in the petitioner's civil cases. Chief Judge Lynch dismissed this complaint, and, because of the petitioner's history of filing frivolous misconduct complaints, issued an order to show cause. See Lynch, C.C.J., Order, In re: Complaint No. 01-08-90029, October 28, 2008, and Lynch, C.C.J., Show Cause Order, In re: Complaint No. 01-08-90029, October 28, 2008. The petitioner did not respond and, on December 9, 2008, the Judicial Council issued an order precluding the petitioner from filing any new judicial misconduct complaints without permission of the Judicial Council. See Judicial Council of the First Circuit, Order, In re: Complaint No. 01-08-90029, December 9, 2008. This order did not apply to the present complaint which the petitioner had filed before issuance of the show cause order.

In the pending matter, the petitioner originally alleged that the absence of forms for prisoner civil rights cases deprives litigants of access to "what types of facts should be stated" in their civil complaints. The petitioner contended that, as a result, the prisoners file civil complaints that are overly broad, precipitate "purposeful dissatisfaction" by the presiding judges,

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<sup>2</sup>The petitioner did not file a petition for review in connection with Complaint No. 469.

and result in dismissal for failure to comply with required pleading requirements. The petitioner maintained that, while these orders of dismissal are issued without prejudice, the burden and expense of refiling force the litigants to abandon their otherwise successful case(s).

As to the USM-285 forms, the petitioner charged that the presiding judges are "purposefully sending prisoners" these forms with carbon paper that is confiscated by the prisons, thereby impeding the prisoners' ability to complete service of process. Lastly, the petitioner asserted that the failure to provide hard copies of the court's local rules constitutes misconduct by the chief district judge.

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the petitioner presented no facts or evidence in support of any charges of wrongdoing by the chief district judge. Chief Judge Lynch explained that the petitioner improperly concluded that the chief district judge is automatically responsible for alleged administrative errors or omissions that have transpired in his court, and that such administrative matters amount to misconduct. The Chief Judge stated that such allegations do not, absent evidence of personal bias or wrongdoing by the charged judge -- of which there was none -- constitute cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h), and cases cited. Accordingly, Chief Judge Lynch dismissed the complaint as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not indicative of misconduct, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rules 11(c)(1)(C), and 11(c)(1)(A), respectively.

The Chief Judge further noted that the petitioner's allegations were brought to the attention of the district court which uploaded the USM-285 form, previously available only in

hard copy, onto the court's website. Lastly, Chief Judge Lynch observed that, while the court does not issue hard copies of its local rules, it provides a guide to filing a civil action for pro se litigants, in both hard copy and on-line, which delineates many of the pleading requirements contained in both the federal and local rules of procedure.

In the petition for review, the petitioner states that the "reasons why the Chief Judge should not have dismissed the complaint are set forth in the complaint itself," and adds that the guide fails to adequately "instruct the inmates on the filing requirements . . . ." The petitioner reiterates the charge that prison officials confiscate the carbon paper on USM-285 forms as contraband, in order to impede service of process, and that the chief district judge's failure to address this issue is misconduct. Lastly, the petitioner states that pro se inmates are entitled to a hard copy of the local rules like those given to "state's attorneys."

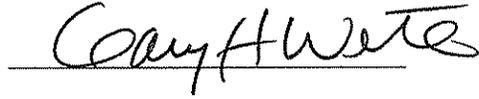
The petition for review is without merit. As thoroughly explained by Chief Judge Lynch in the order of dismissal, procedural issues, like those raised in the complaint, are neither automatically attributable to the chief district judge nor amount to misconduct. The petitioner does not provide any information suggesting that the chief district judge sought to undermine the court access of pro se incarcerated litigants, or has engaged in any other "cognizable misconduct." See Rules of Judicial Misconduct, Rule 3(h). Accordingly, the complaint was properly dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.<sup>3</sup>

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct

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<sup>3</sup>As also indicated by the Chief Judge, the district court has, nevertheless, considered the petitioner's procedural claims. While it, like many other courts, no longer prints hard copies of its local rules, it has made the USM-285 forms available on the internet.

Complaint No. 01-08-90035 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in cursive script that reads "Gary H. Wente". The signature is written in black ink and is positioned above a horizontal line.

Gary H. Wente, Secretary