

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90019, 01-11-90020, 01-11-90021, 01-11-90022, 01-11-90023,
01-11-90024, and 01-11-90025

BEFORE

Lisi, O'Toole, Woodcock, Besosa, and Laplante District Judges

ORDER

ENTERED: FEBRUARY 2, 2012

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a district judge and six appellate judges in the First Circuit. The petitioner alleged that the judges issued erroneous rulings in petitioner's criminal case, appeal and petitions for post-conviction relief.

The petitioner originally alleged that the district judge, who presided over the petitioner's criminal trial on firearms charges, unlawfully enhanced petitioner's sentence and, thereby, committed "plain error." The petitioner argued that the court wrongfully relied on perjured testimony in imposing an enhanced sentence for a crime with which petitioner was not charged.

The petitioner further alleged that each of the identified appellate judges neglected to recognize or correct the district court's error in ruling on petitioner's multiple requests for post-conviction relief. The petitioner asserted that one panel denied the petitioner's application for leave to file a second or successive habeas petition and failed to recognize petitioner's newly

discovered evidence, and that another panel erroneously stated that petitioner sought to vacate his conviction, as opposed to just the sentence enhancement. Petitioner concluded that the circuit judges engaged in misconduct by "keeping [petitioner] unlawful[ly] incarcerated because of a plain error in his sentencing"

Chief Judge Lynch, who was authorized to review the misconduct complaint pursuant to Rule 25(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), dismissed it as not cognizable. The Chief Judge observed that the petitioner did not purport to submit evidence of improper motive but relied on the erroneous argument that, because his misconduct complaint was "directly related to the merits of a decision or procedural ruling, . . . [it was] in conformity with [28 U.S.C.] § 351(a)." The Chief Judge explained that the opposite is true; a misconduct complaint that is based only on a litigant's disagreement with the substance of rulings issued in a case does not state a claim under the misconduct statute. See Rules of Judicial-Conduct, Rule 3(h)(3)(A).

As the misconduct complaint and the reviewed record of petitioner's litigation were devoid of any evidence of improper judicial motivation - either in connection with the petitioner's underlying conviction and sentence, with his appeal or with respect to any of his petitions for post-conviction relief - the Chief Judge dismissed it as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively.

In the petition for review, the petitioner first asserts that the Judicial Council committed "jurisdictional error" in violation of the misconduct statute, 28 U.S.C. § 351(c), when it

authorized the Chief Judge to dispose of the petitioner's complaint. The petitioner next contends that, in reviewing the matter, Chief Judge Lynch neglected to address the "merits" of the petitioner's allegations against the charged judges. The petitioner asserts that Chief Judge Lynch failed to consider the evidence of "unlawful [sentence] enhancement" by the district court that the petitioner submitted with the misconduct complaint.

The petitioner further reiterates his original claims that the district judge improperly relied on perjured testimony in ordering the petitioner's sentence enhancement and that the Court of Appeals repeatedly denied petitioner's requests for further review, despite evidence that established that the petitioner had been wrongfully sentenced. Petitioner adds that the Assistant United States Attorney who sought the sentence enhancement on behalf of the government had not been appointed to office when he filed the sentencing memorandum in the petitioner's case. Petitioner concludes that the judges' "refusal to consider the merits of a constitutional claim will cause a miscarriage of justice," and requests an order reversing petitioner's sentence enhancement.

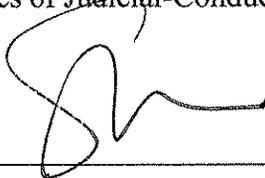
The petition for review is without merit. As an initial matter, the judicial misconduct complaint procedure does not provide an avenue for modifying a court order or for obtaining other relief in a case. See 28 U.S.C. § 354(a)(2), and Rules for Judicial-Conduct, Rules 19 and 20.

Further, petitioner's reliance on the language of 28 U.S.C. § 351(c) is misplaced. While the statute does, as alleged, provide that misconduct complaints against the chief circuit judge shall be forwarded to the "circuit judge in regular active service next senior in date of commission," 28 U.S.C. § 351(c), the other circuit judges were disqualified from considering the

matter. See Rules of Judicial-Conduct, Rule 25(b). Where, as here, a patently frivolous misconduct complaint is filed against all active appellate judges in the Circuit, the Judicial Council may vote, as it did in the present matter, to allow the Chief Judge to address it. See Rules of Judicial-Conduct, Rule 25(f), and Commentary to Rule 25.

In reviewing the misconduct complaint, Chief Judge Lynch appropriately determined that it was not cognizable. In both the original complaint and in the petition for review, the petitioner contends that an error of law constitutes misconduct. As the Chief Judge explained, this is not the case. The petitioner's claims challenging the original sentence ordered by the district judge and the numerous rulings subsequently issued by the Court of Appeals offer no suggestion of bias, illicit motivation or other wrongdoing by any of the subject judges. Absent information suggesting cognizable misconduct, the complaint was appropriately dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C), respectively. Finally, an alleged error in the government's sentencing memorandum - which has not been demonstrated - would not alone be indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints No. 01-11-90019, 01-11-90020, 01-11-90021, 01-11-90022, 01-11-90023, 01-11-90024, and 01-11-90025 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary