

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90029

BEFORE

Torruella, Lipez, Thompson, Circuit Judges
O'Toole and Besosa, District Judges

ORDER

ENTERED: JANUARY 20, 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 bankruptcy judge in the First Circuit. The petitioner alleged that the bankruptcy judge exhibited bias against petitioner while presiding over petitioner's Chapter 7 petition and related adversary proceeding.

The petitioner alleged that the judge was biased against the petitioner because he appeared pro se. Petitioner contended that the judge did not allow petitioner to respond to motions filed against him, and cited a motion that the trustee filed against petitioner in the adversary proceeding that the judge allegedly granted within two hours without notifying the petitioner.

Petitioner asserted that the judge's bias became "even more predominant," after the petitioner filed a motion to recuse the judge and stated that he intended to file a misconduct complaint and sue the judge in federal court. The petitioner maintained that, five minutes after

petitioner said in court that he intended to file a misconduct complaint, the judge stated that the complaint had been denied, even though petitioner had yet to file it. Finally, the petitioner alleged that the judge intentionally "decreased the assets" in petitioner's estate, and improperly addressed petitioner in a "demeaning" and "joking" manner.

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the reviewed record - including the misconduct complaint, as well as the dockets, pleadings, and court orders in both of petitioner's cases - offered no evidence of judicial bias. Chief Judge Lynch observed that, in deference to the petitioner, the judge vacated a default judgment initially entered against petitioner in the adversary proceeding. The Chief Judge noted that, after the petitioner failed to appear at a rescheduled hearing, the court denied the petitioner's discharge. Chief Judge Lynch further noted that, after the petitioner filed and withdrew two motions for the judge's recusal, the judge denied petitioner's third such motion after affording him a hearing. As the reviewed materials contained no information suggestive of judicial bias - either before or after the petitioner sought the judge's recusal - Chief Judge Lynch dismissed it, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C).

Chief Judge Lynch next determined that the claims that the judge told the petitioner that an unfiled misconduct complaint had been denied and that the judge's demeanor was inappropriate or disrespectful were also presented without any basis in fact. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). The Chief Judge additionally noted that the tone maintained by a judge is not alone indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct, Rule 11(c)(1)(A). See also Boudin,

C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4.

With respect to the claim that petitioner was denied the opportunity to respond to motions, Chief Judge Lynch found that the court routinely ruled on motions only after hearing from both parties. Nonetheless, Chief Judge Lynch explained that a court's ruling on a pending motion in the absence of an opposition is not inherently improper - either legally or ethically. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 2-3. The Chief Judge determined that the few occasions in the adversary proceeding in which the court did rule on motions filed by the trustee shortly after they were filed and in the absence of an opposition did not suggest misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A). To the extent that petitioner was asserting a clerical error in the mailing of notices, Chief Judge Lynch found no evidence of this claim and reasoned that it would not, even if true, indicate judicial impropriety. See id., and Amended Order, In Re: Complaint No. 406, supra, at 3.

Lastly, the Chief Judge determined that, as there was no evidence of bias, the petitioner's disagreement with the substance of orders issued by the court - including its denial of the petitioner's motion for recusal, its denial of discharge and any rulings that affected the value of petitioner's assets - did not constitute a cognizable basis for a misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

In the petition for review, the petitioner offers no additional information. He asks only that the Judicial Council review his misconduct complaint.

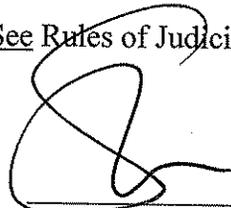
The petition for review is without merit. As Chief Judge Lynch appropriately determined, the misconduct complaint and the record of the petitioner's cases offer no suggestion

that the judge was biased against the petitioner because he appeared pro se or for any other reason. There is likewise no evidence that the judge improperly altered the value of petitioner's assets or that the judge told the petitioner that a misconduct complaint that had yet to be filed had already been denied. Further, our review of the record reveals no evidence that the judge addressed complainant in a joking or otherwise inappropriate tone. Accordingly, the misconduct complaint was appropriately dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

As the Chief Judge also explained, ruling on motions in the absence of an opposition is not itself indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A), and Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 2-3.

Finally, as there was no evidence of illicit motivation or animus, to the extent that the misconduct complaint was based on the petitioner's disagreement with the substance of court orders issued in either of his cases, it was appropriately dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B),

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90030 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary