

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90033

BEFORE

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

ORDER

ENTERED: MARCH 15, 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 in the First Circuit. The petitioner alleged that the judge engaged in misconduct when the judge dismissed petitioner's civil action.

This is petitioner's second misconduct proceeding. Last year, petitioner filed a misconduct complaint against a magistrate judge alleging that the magistrate judge failed to report misconduct in connection with the petitioner's habeas corpus proceeding. See Judicial Misconduct Complaint No. 01-11-90004. Chief Judge Lynch dismissed Complaint No. 01-11-90004 as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See Order, Lynch, C.C.J., In Re: Complaint No. 01-11-90004, May 18, 2011. The Judicial Council affirmed the order of dismissal. See Order, Judicial Council of the First Circuit, In Re: Complaint No. 01-11-90004, October 3, 2011.

In the present matter, the petitioner alleged that the district judge "arbitrarily and capriciously" dismissed the petitioner's civil rights case. Petitioner asserted that the judge harbored a "sinister motive" when he wrongfully concluded that federal law did not shield petitioner from criminal prosecution, as the petitioner had contended in his civil action. The petitioner cited the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct) for the proposition that "an allegation, however unsupported, that a judge ruled against the petitioner because the judge had an improper motive or because the language in the judge's ruling reflects bias, is not merits-related."¹ Petitioner concluded that the judge "cynically used an error of judicial judgment as a shield"

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge observed that, in the court's memorandum and order, the judge granted the petitioner's motion to proceed *in forma pauperis* and liberally construed the filed complaint before determining that it failed to state a claim for relief. Chief Judge Lynch noted that the judge explained that the cited statute did not protect the petitioner from criminal prosecution, and that the petitioner failed to state a claim under other potential avenues for challenging the legality of his conviction and incarceration.

The Chief Judge determined that the misconduct complaint was based only upon the petitioner's disagreement with the court's dismissal of his case. Chief Judge Lynch explained that, although the petitioner asserted the existence of a "sinister" motive underlying the judge's

¹The provision derives from the Commentary to Rule 3 which provides, in part, that "an allegation -- however unsupported -- that a judge conspired with a prosecutor to make a particular ruling is not merits-related. . . . An allegation that a judge ruled against petitioner because the petitioner is a member of a particular racial or ethnic group, or because the judge dislikes the petitioner personally, is also not merits-related." Rules of Judicial-Conduct, Commentary on Rule 3.

decision, he provided no facts or evidence - in his misconduct complaint, in the court's order of dismissal, or elsewhere - in support of this claim. As the allegation of improper motive was presented without any basis in fact, it was dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Chief Judge Lynch further explained that, as there was no evidence of bias, insofar as the petitioner disputed the substance of the judge's order, the misconduct complaint was merits-related. See Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, the misconduct complaint was also dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

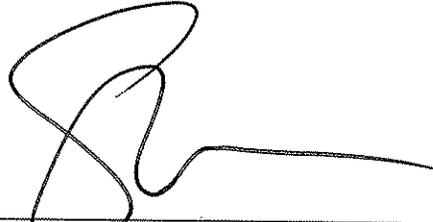
In the petition for review, the petitioner asserts that the allegations in the misconduct complaint went "beyond a challenge to the correctness or merits of the . . . judge's ruling." Petitioner contends that the "propriety" of the judge's decision-making is at issue, including whether petitioner is "unpopular with the press, the public, government officials and the subject judge" because his case "presents difficult, controversial, [and] unpopular issues." The petitioner concludes that the judge issued the objectionable ruling because the judge harbors "animosity and distrust" for the petitioner's exercise of his religious beliefs.

The petition for review is without merit. The petition for review, like the original complaint and the reviewed record, offers no facts that substantiate the assertion that the judge was improperly motivated in dismissing petitioner's case. As explained by Chief Judge Lynch, a petitioner must offer some facts or evidence, "apart from the ruling itself," in support of a claim of bias or impropriety. Rules of Judicial-Conduct, Commentary on Rule 3. The petitioner does not provide a single fact suggesting that the petitioner was "unpopular" with the judge, let alone

that the judge harbored some animosity against the petitioner because of his religion or for any other reason. Lacking factual substantiation, the misconduct complaint was appropriately dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

As there was no evidence of illicit judicial motivation, insofar as the misconduct complaint was based upon the petitioner's disagreement with the judge's rulings, it was also properly dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90033 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line extending to the right.

Susan Goldberg, Acting Secretary