

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

---

IN RE  
COMPLAINTS NOS. 01-11-90036 and 01-11-90037

---

BEFORE

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

---

ORDER

ENTERED: MAY 14, 2012

---

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing her complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a magistrate judge and a district judge in the First Circuit. The petitioner alleged that the magistrate judge engaged in misconduct while presiding over one of the petitioner's civil cases.<sup>1</sup>

Shortly after filing this complaint, the petitioner filed another misconduct complaint against three circuit judges concerning petitioner's appeals. See note 1, *supra*. Judge Boudin dismissed this complaint(s), pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See Boudin, C.J., Order, In Re: Complaints Nos. 01-11-90040, 01-11-90041, and 01-11-90042, December 15, 2011.

In the pending matter, the petitioner alleged that the magistrate judge and the district judge exhibited bias in favor of the defendants by dismissing petitioner's case for failure to

---

<sup>1</sup>Court records indicate that the petitioner has filed four civil cases in the district court, and three appeals.

execute service of process. The petitioner stated that she provided the court and the United States Marshals Service (U.S.M.S.) with the primary defendant's correct address, and surmised that the Marshals did not really attempt to effectuate service. The petitioner concluded that the court improperly dismissed the case, and requested its reinstatement and issuance of a default judgment.

Chief Judge Lynch dismissed the complaint as baseless. As an initial matter, the Chief Judge explained that the judicial misconduct procedure does not provide an avenue for modifying an order or for obtaining relief in a pending or closed case. See 28 U.S.C. § 354(a)(2), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial-Conduct), Rule 20(b).

Moreover, Chief Judge Lynch determined that the reviewed record - including the misconduct complaint, the docket and relevant pleadings and court orders from petitioner's case - provided no information suggestive of bias or any other wrongdoing by either the magistrate judge or the presiding district judge. The Chief Judge observed that, for over three years, the magistrate judge gave petitioner multiple opportunities to provide the U.S.M.S. with a valid address or to otherwise perfect service on the defendant. Chief Judge Lynch ascertained that the magistrate judge ultimately recommended dismissal of the case without prejudice, due to the failure to effectuate service, and the district judge approved the magistrate judge's recommended decision. As there were no facts indicative of bias, improper motive or other impropriety, Chief Judge Lynch dismissed the misconduct complaint(s) as frivolous, pursuant to See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(C).<sup>2</sup>

---

<sup>2</sup>The Chief Judge noted that any claim that the U.S.M.S. erred or misrepresented its attempt to serve the defendant was both not cognizable under the judicial misconduct statute and

Absent evidence of bias or animus - of which there was none - the Chief Judge explained that petitioner's disagreement with either the magistrate judge's recommended ruling or with the district judge's order adopting the recommended ruling did not constitute a cognizable misconduct complaint. Therefore, the complaint was also dismissed 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 reasserts that the court erred in dismissing the petitioner's case for lack of service. The petitioner contends that she demonstrated to the court that any failure to effectuate service was not petitioner's error, that there is no proof that the U.S.M.S. attempted service, and that the court wrongfully put the burden on petitioner in violation of the governing rules of procedure. Petitioner charges, apparently for the first time, that the magistrate judge and the district judge engaged in cognizable misconduct by engaging in "improper discussions with parties or counsel for one side in a case," by failing to issue the default judgement to which the petitioner was entitled, and by conspiring with the U.S.M.S. and the defendant to defeat the petitioner's case. The petitioner requests the appointment of a different judge.

The petition for review is without merit. First, as explained by Chief Judge Lynch, the judicial misconduct complaint procedure does not provide an avenue for obtaining relief in a pending or closed case, including the recusal or reassignment of a judge. See 28 U.S.C. § 351, *et. seq.* See also Rules for Judicial-Conduct, Rules 11, 19, and 20.

Moreover, there is no information in the reviewed record suggesting that the magistrate judge or the district judge was biased or improperly motivated in ruling on the petitioner's case.

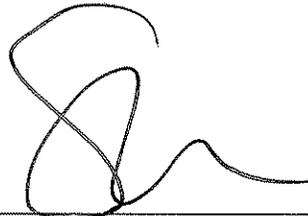
---

unfounded.

As the Chief Judge determined, the presiding magistrate judge concluded that the court was obligated to dismiss the case for failing to effectuate service within 120 days, as required by Fed.R.Civ.P. 4(m). As Chief Judge Lynch also noted, the record demonstrates that the magistrate judge offered petitioner multiple opportunities to address this issue before recommending the dismissal of the case. The petitioner points to nothing that would undermine the integrity of the magistrate judge's reasoning or with that of the district judge in upholding this determination. As there is no evidence that the magistrate judge or the district judge engaged in improper communications, a conspiracy, or any other wrongdoing, the complaint was appropriately dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Absent evidence of improper motivation - of which there is none - petitioner's claims that the court misplaced the burden of proof, failed to issue a default judgment, or otherwise issued incorrect rulings were appropriately dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rule for Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints No. 01-11-90036 and 01-11-90037 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a small flourish.

\_\_\_\_\_  
Susan Goldberg, Acting Secretary