

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-11-90040, 01-11-90041, and 01-11-90042

BEFORE

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

ORDER

ENTERED: MAY 29, 2012

Petitioner, a pro se litigant, has filed a petition for review of Judge Boudin's order dismissing her complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against three circuit judges in the First Circuit. The petitioner alleged that the circuit judges engaged in misconduct in ruling on the appeals of petitioner's three trademark infringement cases.¹

Shortly before filing this misconduct complaint, the petitioner had filed a misconduct complaint against a magistrate judge and a district judge alleging misconduct in connection with another of petitioner's cases. See note 1, *supra*. Chief Judge Lynch dismissed this complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See Order, Lynch, C.C.J., In Re: Complaints Nos. 01-11-90036 and 01-11-90037, November 29, 2011. The First Circuit Judicial Council affirmed the Chief Judge's order of dismissal. See Order, Judicial Council of

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

the First Circuit, In Re: Complaints Nos. 01-11-90036 and 01-11-90037, May 14, 2012.

In the present matter, the petitioner alleged that the circuit judges exhibited a "severe impairment of cognitive abilities" when they wrongfully upheld the district court decision dismissing two of petitioner's cases for failing to comply with the applicable statute of limitations. Petitioner argued that the district court miscalculated the limitations period and stated that the district judge's determination that petitioner had lacked "reasonable diligence" in pursuing her claims was "beyond [her] comprehension." The petitioner added that the stay imposed in her remaining appeal was "illegal because [it] is going on a very long time."

Judge Boudin dismissed the complaint. The Judge explained that "[c]ognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling" Rules of Judicial-Conduct, Rule 3(h)(3)(A). He observed that the petitioner offered no evidence of bias or disability, but alleged only that she disagreed with the substance of the court's orders affirming the dismissal of two of petitioner's cases and with an automatic stay entered in the third case.² Judge Boudin determined that the assertion that these orders were themselves indicative of the judges' "cognitive impairment" was utterly frivolous. Accordingly, the misconduct complaint was dismissed 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 also Rules of Judicial-Conduct, Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

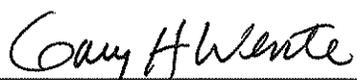
In the petition for review, the petitioner reasserts the claim that her appeals were improperly dismissed. Petitioner recounts the basis for her underlying claims against the

²Judge Boudin noted that, although not relevant to the disposition of the misconduct complaint, the stay was not entered by the named panel of judges, but automatically under the Bankruptcy Code.

defendants, and asserts that the judges did not correctly apply the statute of limitations to petitioner's intellectual property cases. Petitioner contends that the judges harbored an "improper motive, . . . had a mental disability and . . . did not know what the meaning of a stay means." Petitioner argues that, because her cases were interrelated, it was improper for the court to dismiss two of them while staying the third. The petitioner concludes that this differing result - the stay in one case and the dismissal of the other two- evidences that the judges were "biased or slanted" against the petitioner because she appeared pro se.

The petition for review is without merit. The petition for review, like the underlying misconduct complaint(s), does not offer a single fact in support of the allegations that circuit judges were biased against the petitioner - either because she was pro se or for any other reason - or suffered from a "disability." As Judge Boudin observed, the stay in the one case entered automatically under the Bankruptcy Code. Where, as here there is no information suggesting that the judges had an improper motive of any kind, the claim of legal error - with regard to the stay of the one case or the dismissal of the other two as time barred - does not constitute a cognizable complaint of judicial misconduct. Accordingly, the misconduct complaint was appropriately dismissed as frivolous, 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 also Rules for Judicial-Conduct, Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints No. 01-11-90040, 01-11-90041 and 01-11-90042 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Gary H. Wentz, Secretary