

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-12-90027, 01-12-90028, 01-12-90029, and 01-12-90030

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BEFORE

Howard and Kayatta, Circuit Judges  
DiClerico, Lisi and Besosa, District Judges

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ORDER

ENTERED: JULY 2, 2013

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Petitioner, a 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 magistrate judge and three appellate judges. The petitioner alleged that the judges engaged in misconduct in dismissing petitioner's employment discrimination case. The petitioner claimed that the judges failed to recognize the merits of petitioner's case and asked that they be investigated for abuse of judicial discretion.

Chief Judge Lynch dismissed the misconduct complaint as not cognizable. The Chief Judge determined that the reviewed record - including the misconduct complaint, the dockets, and the relevant district and appellate court orders - offered no evidence of bias, abuse of discretion or other wrongdoing. The Chief Judge observed that the magistrate judge issued a lengthy order explaining that the facts failed to establish petitioner's claims of discrimination under federal law. Chief Judge Lynch further noted that the appellate judges reviewed the

district court record and affirmed the magistrate judge's order.

Since the misconduct complaint was based exclusively on petitioner's disagreement with the substance of the courts' orders, Chief Judge Lynch dismissed it as merits-related, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a judge's ruling, . . . without more, is merits-related."). As there was no evidence of bias or other wrongdoing by any of the judicial officers, the Chief Judge also dismissed the misconduct complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

In the petition for review, petitioner restates his original claim that the judges improperly dismissed petitioner's underlying case. The petitioner states that his "powerful evidence . . . clearly show[s] that there simply was [sic] not enough facts to enter summary judgment for the defendants." Petitioner surmises that the courts' dismissal of the case in the face of overwhelming evidence to the contrary demonstrates a "premeditated . . . intent to dismiss [the] case ex-parte." Petitioner concludes that the wrongful dismissal of both the case and the misconduct complaint constitutes "demonstrably egregious and hostile" treatment of the petitioner in violation of Rule 3(h)(1)(D) of the Rules of Judicial-Conduct.

The petition for review is baseless. Petitioner offers no facts indicating that any of the judges involved in the review of petitioner's case, either in the district court or on appeal, were biased or improperly motivated in any way. Nor is there any evidence whatsoever suggesting that any of the judges treated petitioner in an "egregious" or "hostile" manner. As the Chief Judge noted, the magistrate judge issued a lengthy ruling concluding that the facts did not support a violation of federal law. The circuit judges reviewed the record and affirmed the district court's

judgment for essentially the same reasons.

As Chief Judge Lynch explained, the petitioner's disagreement with the courts' reasoning or conclusions does not alone demonstrate misconduct or wrongdoing. See Rules of Judicial-Conduct, Rule 3(h)(3)(A), *supra*. Further, the record establishes that neither the district nor appellate court ruled on the case *ex parte*. Accordingly, the misconduct complaint was appropriately dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as frivolous, 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.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-12-90027, 01-12-90028, 01-12-90029, and 01-12-90030 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

  
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Gary H. Wente, Secretary