

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-13-90002

BEFORE

Howard and Kayatta, Circuit Judges
DiClerico, O'Toole and Torresen, District Judges

ORDER

ENTERED: AUGUST 19, 2013

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. Petitioner alleged that the judge engaged in misconduct in presiding over the petitioner's petition for a writ of habeas corpus.

The petitioner originally alleged that the judge's orders denying petitioner's requests for entry of default judgment, dismissing the habeas petition, and denying his request to reopen the case were "not based in law or equity," and were, therefore, "highly prejudicial." Petitioner argued that his incarceration was based on a void state order and that petitioner had exhausted state remedies, as required, before bringing the federal proceeding. Petitioner added that the court should have allowed his requests for default judgment and concluded that the judge abused his discretion and violated petitioner's Constitutional rights. Petitioner asked that the district court's judgment be reversed and that habeas relief be granted.

Chief Judge Lynch dismissed the misconduct complaint. As an initial matter, the Chief

Judge explained that the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for modifying an order in a pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19.

Chief Judge Lynch then dismissed the misconduct complaint as not cognizable. The Chief Judge explained that the reviewed record - including the misconduct complaint, and the docket, pleadings and orders issued in the case - demonstrated that the judge had dismissed the case for failure to exhaust state remedies. Chief Judge Lynch noted that the judge had repeatedly explained this deficiency to petitioner in both the case at issue and in a previous matter.

Chief Judge Lynch explained that cognizable misconduct "does not include an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits related." Rules of Judicial-Conduct, Rule 3(h)(3)(A). As the misconduct complaint was based only on petitioner's disagreement with the court's rulings in the case, it was dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

As the petitioner offered no evidence whatsoever of bias or other misconduct, Chief Judge Lynch also dismissed the misconduct complaint as frivolous, 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, the petitioner asserts that Chief Judge Lynch's order of dismissal is "not supported by law or equity," and is, therefore, "prejudicial and inappropriate." The petitioner reiterates the allegation that the district judge's rulings in petitioner's underlying case suffer from the same deficiency. Petitioner repeats the assertions that the judge

"prejudicially discriminated" against him by failing to enter a default judgment and by improperly dismissing the case for failing to exhaust state remedies. Petitioner concludes that, having been denied the "basic fundamental principles of jurisprudence under 28 U.S.C. § 2254 . . .," he has a legal right to an immediate hearing and the appointment of counsel at government expense.

The petition for review is baseless. First, as Chief Judge Lynch explained, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not offer a mechanism for providing relief in a case. See Rules of Judicial-Conduct, Rules 11 and 19. Moreover, as the Chief Judge also explained, without evidence of bias, disagreement with the substance of a court's ruling does not constitute a cognizable misconduct complaint. See id., at Rule 3(h)(3)(A).

The petition for review, like the judicial misconduct complaint and the reviewed record of the case, offers no facts or evidence indicating that the judge was biased or improperly motivated in ruling in petitioner's habeas proceeding. As the Chief Judge observed, the record indicates that petitioner's initial motion for default judgment was denied and the case was dismissed on the ground that petitioner had failed to exhaust state remedies. The court then denied a subsequent motion for default judgment as moot and declined to reopen the case on petitioner's motion. While the petitioner disputes these determinations, disagreement with the substance of a court's ruling in a case does not alone suggest prejudice, bias or other misconduct on the part of the judge. Accordingly, the misconduct complaint was appropriately dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, 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 No. 01-13-90002 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Gary H. Wenté, Secretary