

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90017

BEFORE

Torruella, Thompson, and Kayatta, Circuit Judges
Lisi and Besosa, District Judges

ORDER

ENTERED: APRIL 2, 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 magistrate judge. The petitioner alleged that the magistrate judge discriminated against the petitioner while presiding over his civil rights proceeding.

The petitioner originally alleged that the magistrate judge wrongfully denied petitioner's motions to proceed In Forma Pauperis (IFP) and to appoint counsel, and wrongfully recommended the dismissal of his case. Petitioner contended that the magistrate judge's decisions in the case were "insidiously bias, wilful, reckless, [and] malicious," reflected an abuse of authority, and constituted a violation of petitioner's Constitutional rights.

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge determined that the petitioner provided no evidence of bias or improper judicial motive. Chief Judge Lynch observed that the reviewed record of the proceeding - including the misconduct complaint, the docket, and the relevant pleadings and court orders - indicated that the magistrate judge denied

petitioner's motion to proceed IFP because it was incomplete. The Chief Judge noted that the court did so without prejudice, instructed petitioner on how to correct the deficiencies, and warned the petitioner that the case would be dismissed if a corrected IFP application and an amended complaint were not filed by a specific date.

Chief Judge Lynch further observed that, when petitioner failed to comply with the court's specific directives by the deadline, the magistrate judge recommended dismissal of the IFP application with prejudice and the dismissal of the case. With respect to petitioner's request for the appointment of counsel, Chief Judge Lynch noted that the magistrate judge denied the motion, explaining that counsel in civil cases is appointed only in exceptional circumstances.

As petitioner had offered no evidence of bias, discrimination or other judicial wrongdoing, Chief Judge Lynch dismissed the misconduct complaint as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C). Insofar as the misconduct complaint was based exclusively on judicial rulings with which the petitioner disagreed, it was also dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

In the petition for review, petitioner restates his original claims that the magistrate judge's orders in the case were "totally faulty, insidiously bias, abus[ive] of judicial discretion/powers, discriminatory, . . . and prejudicial to the administration of justice." The petitioner argues that he made the necessary corrections to the pleadings, as directed by the magistrate judge, and refiled them appropriately. Petitioner concludes that the magistrate judge's rulings reflect intentional discrimination based upon petitioner's race and national origin, as well as a violation of

petitioner's Constitutional rights.

Petitioner adds that Chief Judge Lynch's determination that the case had been dismissed because of petitioner's failure to comply with the magistrate judge's specific directives was "wrong, faulty, . . . erroneous, . . . made in bad faith," and demonstrated a knowing and deliberate disregard of the facts and the law. Petitioner maintains that the misconduct complaint was not "frivolous" because he provided an "arguable basis in law and in facts" for his claims.

The petition for review is without merit. The allegedly corrected IFP motion to which the petitioner now refers was filed almost two months after the magistrate judge had recommended the dismissal of the case for failure to file corrected pleadings by a specific date, as ordered. To afford the petitioner appellate review of the court's dismissal of the case, the magistrate judge, nevertheless, allowed this latter motion, despite finding that it remained deficient.¹

Despite petitioner's assertion to the contrary, the misconduct complaint, the petition for review and the reviewed record of the underlying proceeding supply no facts whatsoever suggesting that the magistrate judge was biased against the petitioner - either because of his race, national origin, or for any other reason. Accordingly, 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).

Absence evidence of improper motive - of which there is none - the petitioner's disagreement with both the Chief Judge's order dismissing the misconduct complaint and with the magistrate judge's rulings in the case are not cognizable under the judicial misconduct statute. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and

¹Although not necessary to the determination of the misconduct matter, the Court of Appeals affirmed the dismissal of the case.

Commentary on Rule 3 (Challenge to a chief judge's dismissal of a misconduct complaint is "merits-related" where it does nothing more than call "into question the correctness of [the] official action"). Accordingly, the misconduct complaint was also properly dismissed, 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. 01-12-90017 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary