

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90022

BEFORE

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

ORDER

ENTERED: FEBRUARY 12, 2013

Petitioner, an incarcerated 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. The petitioner alleged that the judge engaged in misconduct while presiding over petitioner's habeas corpus proceeding. Petitioner contended that the judge wrongfully denied petitioner's motion for an evidentiary hearing and violated federal law by not personally signing the order of dismissal entered in the habeas action. The petitioner further argued that the judge abused the court's power and effectively conspired with state prison officials by condoning the petitioner's "false imprisonment."

Chief Judge Lynch concluded that the misconduct complaint provided no evidence of bias or improper judicial motive and that the record contained no information suggestive of judicial wrongdoing. The Chief Judge determined that the court dismissed the habeas petition because the petitioner failed to file it in proper form within the time allotted by the court. With respect to petitioner's request for an evidentiary hearing, the Chief Judge observed that the

district judge had denied the motion, filed more than a month after the court had dismissed the case, as frivolous. Since the judge was under no legal or ethical duty to personally sign the dismissal order, the Chief Judge also concluded that that claim was not indicative of judicial misconduct. Accordingly, the Chief Judge dismissed the misconduct complaint as frivolous, not cognizable, and not indicative of misconduct. See 28 U.S.C. § 352(b)(1)(A)(iii); 28 U.S.C. § 352(b)(1)(A)(ii); and 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C), 11(c)(1)(B), and 11(c)(1)(A), respectively.

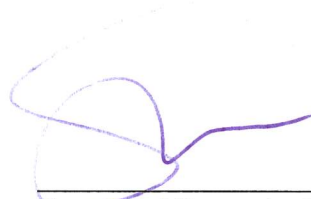
In the petition for review, petitioner restates the arguments he presented in his habeas petition and asks that a writ of habeas corpus be issued forthwith. Petitioner does not assert new claims against the judge, nor does petitioner address further the claims in his misconduct complaint.

The petition for review is without merit. The issues presented in petitioner's misconduct complaint have been thoroughly considered. As Chief Judge Lynch determined, the complaint contained no evidence of bias, improper judicial motive, or other judicial wrongdoing. The record demonstrated that the court dismissed the habeas petition because the petitioner failed to submit it in proper form within the time allotted by the court, and denied petitioner's motion for an evidentiary hearing since it was filed more than a month after the court had dismissed the case.

Because the allegations of wrongdoing had no basis in fact, the Chief Judge properly dismissed the misconduct complaint as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(C). Since the complaint was also based only on the petitioner's

disagreement with the court's rulings in the case, it was properly dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). Finally, as the judge was under no legal or ethical duty to personally sign the dismissal order, this claim was appropriately dismissed as not indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-12-90022 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

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Susan Goldberg, Acting Secretary