

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 480
(No. 01-08-90003)

BEFORE

Selya and Lipez, Circuit Judges
Smith, Woodcock, and Delgado-Colón, District Judges

ORDER

ENTERED: OCTOBER 21, 2008

Petitioner, a pro se litigant, has filed a petition for review of then Chief Judge Boudin's order dismissing her complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge in the First Circuit. The petitioner originally alleged wrongdoing in connection with a civil case that she filed against her former spouse, numerous state court judicial officers and staff, a number of private attorneys, and certain government agencies.

The original complaint contained no clear charges of judicial misconduct. Instead, the petitioner presented a description of an abusive relationship with her former spouse and an alleged conspiracy by state court officials, attorneys, and others who participated in her divorce proceeding. The petitioner contended that she has been wrongfully denied assistance by multiple state and federal agencies, and faulted the judge for failing to provide her with a competent attorney to present her claims. The complaint included apparent citations to miscellaneous federal statutes, as well as a description of the function of the Office of the Circuit Executive. It

also requested the consolidation of various state and federal court proceedings and disciplinary matters.

Then Chief Judge Boudin dismissed the complaint. The Chief Judge first noted that the judicial misconduct statute does not provide a mechanism for consolidating court proceedings or for considering complaints of wrongdoing by state judges or government officials other than federal judges. See 28 U.S.C. § 351 et. seq; see also Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability (Rules of Judicial Misconduct), Rules 1(c) & 1(e).¹

Then Chief Judge Boudin recounted the chronology of the petitioner's case as follows. The Chief Judge observed that the petitioner filed the proceeding in March of 2007 and submitted the filing fee in June. In September, the court allowed the petitioner's motion for an extension of time in which to complete service and denied her motion for the appointment of counsel, noting that the matter did not present the type of "exceptional circumstances" that would warrant the appointment of counsel in a civil matter. The following month, the judge issued an order striking a "purported criminal complaint against the defendants." The court reminded the petitioner that, as a private citizen, she lacks authority to enforce a criminal statute. By the time of the Chief Judge's review, the defendants had filed motions to dismiss (which were pending), and the petitioner had filed two unsuccessful appeals, as well as additional motions.

The Chief Judge determined that the reviewed materials--including the complaint, the docket, and the reviewed court orders--did not provide any indication that the judge had engaged

¹In April of 2008, revised Rules of Judicial Misconduct took effect. See Rules for Judicial-Conduct and Judicial-Disability Proceedings. The revised rules do not affect the disposition of the present matter.

in wrongdoing of any kind. Accordingly, the complaint was dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). As there was no evidence of illicit judicial motivation, then Chief Judge Boudin also concluded that the petitioner's disagreement with the court's orders did not provide grounds for a cognizable claim of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii).

In the petition for review, the petitioner reiterates allegations of wrongdoing by her former lawyer, the United States Attorney's Office, the Attorney General, and others. The petitioner then raises allegations of misconduct against another district judge (who was not a subject of the original complaint). The petitioner states that, after the first judge ordered her criminal complaint stricken from the record, she asked the second judge to consider it, yet both judges failed to inquire properly into the petitioner's allegations and their impact on the public welfare. The petitioner asserts that her proceeding was mishandled because of her nationality, gender, age and pro se status. The petitioner cites miscellaneous Federal Rules of Procedure and selected Rules of Judicial Misconduct. She includes copies of several lengthy pleadings that she filed with the court in May and June of 2008. Relying on Rule 25 of the Rules of Judicial Misconduct, the petitioner requests that both judges be recused from her case and that the case be transferred to the Second Circuit.

As an initial matter, we note that neither the judicial misconduct statute nor the applicable rules provide a mechanism for obtaining either the recusal of a judge or the transfer of a pending case. The rule cited by the petitioner addresses the disqualification of a judge from ruling on a misconduct complaint and is not applicable to the current proceeding. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 25. As then Chief Judge Boudin explained, the judicial misconduct complaint procedure deals exclusively

with complaints against federal judges; it does not encompass complaints against other state and federal officials. See 28 U.S.C. § 351 et. seq.; Rules of Judicial Misconduct, Rule 4. Finally, because the petitioner did not identify the second judge as a subject of the original complaint, the allegations against him are not appropriate for consideration. It is noted that the petitioner has since filed a judicial misconduct complaint against this judge. See In re: Complaint No. 01-08-90015.

As to the allegations of bias and impropriety by the presiding judge, the petitioner provides no facts in support of any of these charges beyond the broad accusations dispelled by then Chief Judge Boudin. The case docket indicates that, after the court denied the petitioner's motion to proceed in forma pauperis, the petitioner paid the requisite fee and filed several motions for extensions of time. As noted by the Chief Judge, in September of 2007 the court allowed the petitioner's motion for an extension of time in which to complete service and denied her motion for the appointment of counsel. On multiple occasions, the judge ordered that the petitioner's "purported criminal complaint against the defendants" be stricken, explaining that, as a private citizen, the petitioner lacks authority to enforce a criminal statute.

As also noted by the Chief Judge, several defendants filed motions to dismiss and the petitioner filed abortive appeals as well as numerous motions. In April of 2008, the judge entered an order allowing the pending motions to dismiss but denying the defendants' request for an order enjoining the petitioner from further filings. As the petitioner had failed to complete service on the remaining defendants within the extended time, the judge dismissed these claims as well, denied as moot the petitioner's remaining motions, and closed the case.

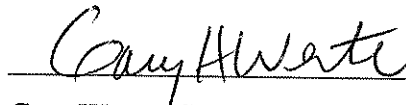
Thereafter, the petitioner continued to file motions (including those submitted with the

petition for review), objections, and affidavits seeking, in part, (i) reversal of the court's decision(s), (ii) further review, (iii) transfer of the case, and (iv) recusal. The court summarily denied all of these requests.

The reviewed materials--including the original complaint, the petition for review, the docket, the pleadings, and the court's orders--provide no facts supporting the charge that the judge was biased against the petitioner based upon her nationality, gender, age, pro se status, or any other factor. Nor does the record offer any suggestion of other judicial wrongdoing in connection with the petitioner's proceeding. Accordingly, the complaint was appropriately dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Where, as here, there is no indication of bias or illicit motivation on the part of the judge, the allegations arising from the petitioner's disagreement with the court's orders (including the denial of the motion for recusal) were properly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 480 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).


Gary Wente, Secretary