

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NO. 01-08-90012
AND NO. 01-08-90013

BEFORE

Torruella, Boudin, and Howard, Circuit Judges
McAuliffe and Woodcock, District Judges

ORDER

ENTERED: FEBRUARY 3, 2009

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaints of judicial misconduct, under 28 U.S.C. § 351(a), against a district judge (No. 01-08-90012) and a chief district judge (No. 01-08-90013) in the First Circuit. The petitioner alleged that the district engaged in misconduct while presiding over his civil rights action against, among others, a municipality, the petitioner's prior attorney, and a state court judge who presided over the petitioner's underlying case for property damage. The petitioner included charges of wrongdoing against the chief district judge for failing to adequately address the alleged misconduct by the presiding district judge, as well as numerous charges against court staff for falsifying and mishandling court records.

The petitioner originally presented allegations of judicial malfeasance, deceit, fraud and judicial conspiracy. The petitioner asserted that the district judge, the chief district judge, court staff, and the defendants in both the petitioner's state and federal court cases conspired to

"criminally alter" court records. These allegedly altered docket entries include an executed summons, oppositions to two of the petitioner's motions, and the transcript of a motion hearing.

The petitioner further asserted that the district judge "acted as a lawyer" for the defendants at this hearing by "stifl[ing the petitioner's] presentation of evidence" and by making misstatements of fact. The petitioner submitted affidavits of four persons, three of whom identified themselves as "court watchers [who] exist solely as a response to judicial corruption" The fourth affidavit was submitted by a person identified as a member of a local coalition. The affidavits stated that the individuals attended the relevant hearing. ¹

The petitioner then argued that the district judge wrongfully refused to enter a default judgment against the defendants, despite a legal obligation to do so, that the judge failed to report "unprofessional attorney conduct," unreasonably and deliberately delayed in issuing rulings, and aided and abetted the defendants by "maliciously dismiss[ing the petitioner's] case while corrupting the judicial process." Lastly, the petitioner contended that the district judge conspired with a former spouse "to deny [petitioner] civil redress." (This allegation apparently emanated from a ruling issued in an unrelated state court civil case in which the former spouse, a judge, had denied the petitioner's motion for relief from judgment.)

As to the chief district judge, the petitioner contended that he committed misconduct when he failed to address the presiding judge's improprieties, and that the chief judge's response to the petitioner's request for assistance--referring the petitioner to the judicial misconduct

¹The affidavits include statements to the effect that the district judge: interrupted the petitioner during the hearing; stated, in reference to the defendant state court judge, that "[i]f he had his robes on, he is immune"; stated that the court would "expedite" its ruling on the petitioner's motion for an injunction; "talked down" to the petitioner; told the petitioner that "he was hardly a novice [at conducting litigation]"; and allowed a witness to appear, despite his failure to provide adequate notice to the petitioner.

complaint process—was inadequate.

Chief Judge Lynch dismissed the complaint. In so doing, the Chief Judge first summarized the relevant chronology, as follows. The petitioner filed the case in the fall of 2006 against a state court judge, a municipality, a water supply company, several attorneys, and other city and state officials alleging civil rights violations in connection with the petitioner's underlying state court case against the town. Returned summonses were filed, and, in the spring of 2007, the petitioner filed a motion for default judgment against those defendants who had failed to file a responsive pleading, as well as a motion for injunctive relief.

Later that month, the petitioner filed a letter to the chief district judge complaining about the alleged delay in the court's handling of the petitioner's motions. The following month, the petitioner filed further pleadings, including an ex parte motion to expedite the court's rulings on his pending motions, motions for extensions of time, and oppositions to the motions to dismiss. The court, thereafter, held the motion hearing cited in the complaint, after which the judge took the pending motions under advisement.

The district judge then issued a lengthy memorandum and order in which the court summarized the proceeding and allowed several of the defendants' motions to dismiss. The judge denied the motion for default, for failure to demonstrate adequate service, denied the petitioner's motion for an injunction, reiterated the concept of judicial immunity, ensured the accuracy of the docket, and denied the petitioner's remaining motion as moot. The petitioner was left with 14 days in which to execute proper service on the remaining defendants.

In August and September 2007, the petitioner appealed and filed additional motions, including a motion asking the chief district judge to remove the presiding district judge from the

case. The district judge declined to rule on these motions until authorized to do so by the court of appeals.

The following month, the court of appeals dismissed the majority of the petitioner's claims as premature (except for the denial of the request for injunctive relief). This order was not recorded on the district court docket and, as a result, apparently did not come to the district judge's attention until the appeals court entered a subsequent order.

In December 2007, the chief district judge entered an order referring the petitioner's request to the presiding district judge, insofar as it sought relief in the case, and referring it to the Chief Judge of the First Circuit, "[t]o the extent that it allege[d] judicial misconduct" The presiding judge promptly ruled on the referred motions, except for two that the court deemed would be "more properly addressed by the Court of Appeals." Thereafter, in the spring of 2008, the petitioner filed additional pleadings, including "Notice[s] of Default," motions for "special relief," and another motion for the district judge's recusal.

Based upon a thorough review of the record, Chief Judge Lynch determined that the petitioner's charges of judicial conspiracy and bias were unsupported. The Chief Judge observed that the transcript of the relevant motion hearing contained no evidence of bias, instead demonstrating the district judge's repeated attempts to solicit the facts underlying the petitioner's legal claims. Nor, the Chief Judge noted, were the petitioner's statements and those of the "court watchers," see note 1, inconsistent with the transcript, in any relevant respect, or suggestive of misconduct. As there was no evidence in the complaint, the relevant transcript, the court's memorandum of decision, or the rest of the reviewed record, that indicated that the district judge sought to "stifle" the petitioner's presentation of evidence, acted as the "attorney for the

defendants," or engaged in fraud, conspiracy, or other criminal activity, the complaint was dismissed pursuant to 28 U.S.C. § 352(b)(1)(B), and Rules of Judicial Misconduct, Rule 11(c)(1)(D).

Chief Judge Lynch further determined that the related allegation that the transcript was "criminally altered" by the judge was presented without any basis in fact, as were the claims that the judge manipulated other portions of the docket or was responsible for a fraudulent certificate of service allegedly filed with oppositions to two of the petitioner's motions. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Furthermore, Chief Judge Lynch explained that, while the materials provided no evidence that clerk's office staff mishandled the record, any such clerical error (or malfeasance) would not be attributable to the judge. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 3. Nor, the Chief Judge noted, did the reviewed record suggest that court staff engaged in any wrongdoing.

Chief Judge Lynch also determined that the fact that the district judge's former spouse had, many years earlier, presided over an unrelated civil case filed by the petitioner in state court did not present a conflict of interest or necessitate the district judge's withdrawal from the present action, especially where, as here, there was no indication that the district judge had been informed of the earlier case. See Code of Conduct for United States Judges, Canon 3C. (Further, a violation of the Code of Conduct does not automatically constitute a violation of the judicial misconduct statute. See Rules of Judicial Misconduct, Commentary on Rule 3.)

The Chief Judge next observed that the statements made by the judge during the course of the motion hearing were not, on the present facts, indicative of judicial misconduct. See 28

U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A). As there was no evidence of illicit judicial motivation, the petitioner's disagreement with the substance of any of the court's orders did not support a cognizable claim of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B). Nor did the record support the claim of improper delay where, as here, there was no indication of improper motive, and the judge acted reasonably promptly on all matters before the court. See Rules of Judicial Misconduct, Rule 3(h)(3)(B).

Finally, there was no evidence of wrongdoing by the chief district judge who appropriately referred the charges of judicial misconduct to the party responsible for addressing such claims. See 28 U.S.C. § 351, et. seq. Accordingly, the charges against the chief district judge were dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial Misconduct, Rule 11(c)(1)(C).

The petition for review reiterates the original allegations, adding only that Chief Judge Lynch has, by reason of the order of dismissal, become a member of the criminal conspiracy intent on “defrauding” the petitioner and others. The petitioner asserts that the Chief Judge’s order of dismissal is “arbitrary, capricious, . . . prejudicial, [and] . . . replete with fabrications” According to the petitioner, the docket and the transcript remain “criminally altered,” and Chief Judge Lynch (and the district judge) failed to acknowledge that the state judge’s rulings were “based on a criminal conspiracy” and are, therefore, “void.”

The petitioner reiterates that he properly served the defendants (a fact that, according to the petitioner, the district judge refused to recognize at the motion hearing). The petitioner concludes that Chief Judge Lynch’s review and order reflect her “malicious motive to derail

[petitioner's] pleadings for relief . . ." and demonstrate that she has "become a party to . . . [the district judge's] violations" of federal law.

The petition for review is baseless. The petition, like the original complaint, contains no evidence that the district judge harbored any illicit motivation in connection with the petitioner's case. The Chief Judge conducted a thorough review of the relevant record before determining that it lacked any information in support of the petitioner's claims that the district judge altered the record, exhibited bias against the petitioner, or engaged in other wrongdoing. As the Chief Judge observed, the transcript of the relevant hearing and the court's subsequent order reflect the judge's attention to the pleadings and patience with the petitioner. The court also gave the petitioner multiple opportunities to address its concern with service of process.

As Chief Judge Lynch also correctly determined, the chief district judge's response to the petitioner's request for assistance was neither inappropriate nor suggestive of misconduct. Finally, insofar as the petitioner relies exclusively on Chief Judge Lynch's order of dismissal as evidence of her complicity in the alleged judicial conspiracy, the claim is not cognizable. See Rules of Judicial Misconduct, Commentary on Rule 3 (A "complaint challenging the correctness of a chief judge's determination to dismiss a misconduct complaint would be properly dismissed as merits-related . . .").

As neither the complaints, the petition for review, nor the reviewed record contain any facts in support of the charges that either the presiding district judge or the chief district judge engaged in misconduct in connection with the petitioner's proceeding, the complaints were appropriately dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints No. 01-08-90012 and No. 01-08-90013 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in cursive script, reading "Gary H. Wente", is written over a horizontal line.

Gary H. Wente, Secretary