

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-08-90098

BEFORE

Selya and Lipez, Circuit Judges,
McAuliffe, Smith and Gelpi, District Judges

ORDER

ENTERED: NOVEMBER 12, 2009

Petitioner, a litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the judge exhibited bias and engaged in impropriety in connection with the petitioner's civil action.

The petitioner alleged that the judge "engaged in [unbecoming] conduct, . . . detrimental to the sanctity and authority of the Court, [and] prejudicial to the effective administration of justice." The petitioner contended that the judge's order of dismissal "[e]xhibited partisan interests," because it was so "far removed from well settled and established judicial principles as to constitute malfeasance" The petitioner charged that the judge intentionally misrepresented the law and the Constitution and that the court's orders were "couched in threats and intimidations" that were "indicative of [the judge's] predisposition, bias and prejudice" The petitioner stated, as an example, that the judge warned him that "an appeal will not be taken

well,” and that this statement was “intimidating and vindictive in nature”

The petitioner next asserted that the judge wrongfully mischaracterized his legal claim (as seeking “to reverse or modify a state court judgment,” when the petitioner, in fact, sought to demonstrate that the state court lacked jurisdiction) and improperly referred to the petitioner as “a prisoner.” Finally, the petitioner charged that the judge failed to take appropriate action in response to unprofessional conduct by the judges and lawyers named as defendants in the proceeding, failed to withdraw from the proceeding despite “prior associations with [the] defendants,” and violated Canons 1, 2, and 3 of the Code of Conduct for United States Judges by engaging in “[e]gregious, unconscionable [and] hostile conduct” The petitioner concluded that the judge’s partiality was due to the judge’s relationships with the defendants in the case, as well as with other district judges who had presided over other cases filed by the petitioner.¹

Chief Judge Lynch dismissed the complaint. Based upon a review of the case docket, relevant pleadings and the court’s orders, the Chief Judge observed that, shortly after the case was filed, the charged district judge allowed the petitioner’s IFP motion. The court then issued a lengthy memorandum and order of dismissal in which the judge reviewed the petitioner’s related cases before dismissing the proceeding sua sponte on the grounds that: (1) the court lacked subject matter jurisdiction; (2) the petitioner’s claims were barred by the Rooker-Feldman doctrine; (3) the court lacked jurisdiction to grant the requested mandamus relief; and (4) both absolute judicial immunity and “quasi-judicial immunity” foreclosed the petitioner’s claims. The judge added that, since the petitioner’s claims were “nothing more than yet another attempt to circumvent the rulings of the state court . . . , he risks being enjoined from litigating in this

¹Court records indicate that the petitioner has filed four civil cases each of which was presided over by a different judge.

Court,” and certified that “any appeal taken by plaintiff of the dismissal of this action would not be taken in good faith.”

Chief Judge Lynch determined that the reviewed materials provided no facts indicating that the judge was improperly motivated in handling the case. To the contrary, the Chief Judge observed that the judge’s lengthy memorandum and order noted that pro se pleadings are to be construed generously, and demonstrated the judge’s detailed attention to the alleged facts and governing law. As there was no evidence that the judge was “hostile” to the petitioner’s claims, improperly influenced (by alleged relationships with the defendants or others), or otherwise harbored any illicit motivation in connection with the matter, the complaint was dismissed 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 Misconduct), Rule 11(c)(1)(C). Chief Judge Lynch further noted that there was no evidence of bias, insofar as the complaint was based upon the petitioner's disagreement with the order of dismissal and/or with other orders issued in the case. Thus, the complaint should also be dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Chief Judge Lynch also observed that the judge's alleged statements (for example, that an appeal would "not be taken well" and referring to the petitioner as a prisoner) were not, on the present facts, indicative of judicial misconduct. Nor was the judge under any obligation either to take action against the defendants for alleged impropriety or to withdraw from the proceeding. Finally, the Chief Judge explained that, while violations of the Code of Conduct may be relevant to allegations of judicial misconduct, see Rules of Judicial Misconduct, Commentary on Rule 3, the present complaint documented no violations of the Code, much less of the judicial

misconduct statute. Accordingly, the complaint was also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A).

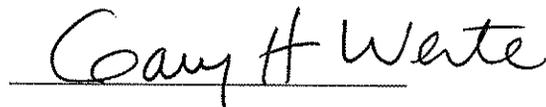
In the petition for review, the petitioner contends that the misconduct rules "are only aspirational, [and] violate prevailing social policies and norms [and] case law authorities" The petitioner continues that the judge's misconduct was "unlawful ab inirio [sic]," and that Chief Judge Lynch misinterpreted the judicial misconduct statute in dismissing the complaint as unfounded. Finally, the petitioner states that the dismissal of both the misconduct complaint and his underlying case "are not taken in good faith," and that his question concerning the constitutionality of the IFP statute, 28 U.S.C. § 1915, "remains unanswered."

The petition for review is without merit. The petition for review, like the underlying complaint, provides no evidence of judicial bias or wrongdoing. As explained by Chief Judge Lynch, the reviewed record of the case contains no information corroborating the petitioner's conclusory claims that the judge was motivated by "bias and prejudice" or improperly influenced by personal relationships with other judges or anyone else. Nor, as the Chief Judge determined, did any other information in the complaint (concerning alleged statements by the judge or alleged unprofessional conduct by other judges and lawyers) suggest a violation of the Code of Conduct, much less judicial misconduct. Thus, the petitioner's claims that Chief Judge Lynch either misinterpreted the misconduct statute or lacked good faith in reviewing the matter are groundless. The complaint was appropriately dismissed pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii) & 352(b)(1)(A)(iii).

The petitioner's remaining contention -- that the judicial misconduct rules are not compulsory -- is inaccurate. The Rules for Judicial-Conduct and Judicial-Disability

Proceedings were promulgated pursuant to federal law, 28 U.S.C. §§ 331, 358, and are mandatory. See Rules of Judicial Misconduct, Rule 2(a). Finally, the judicial misconduct complaint procedure does not afford the petitioner an avenue through which to challenge the constitutionality of the *in forma pauperis* statute, 28 U.S.C. § 1915. See 28 U.S.C. § 351, et. seq.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-08-90098 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in cursive script that reads "Gary H. Wente". The signature is written in black ink and is positioned above a horizontal line.

Gary H. Wente, Secretary