

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-09-90015 AND 01-09-90016

BEFORE

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

ORDER

ENTERED: MAY 18, 2010

Petitioner, a litigant, has filed a petition for review of Chief Judge Lynch's orders dismissing his complaints of judicial misconduct, under 28 U.S.C. § 351(a), against two district judges in the First Circuit. The petitioner alleged wrongdoing in connection with two of his numerous civil proceedings, each of which was presided over by one of the charged judges.¹

In addition to the present matters, the petitioner also filed two other judicial misconduct complaints concerning two of his other cases: Complaint No. 01-09-90018 and Complaint No. 01-09-90023. See note 1, supra. Chief Judge Lynch dismissed each of these complaints on January 5, 2010. See Lynch, C.C.J. Orders, In Re: Judicial Misconduct Complaint No. 01-09-90018, and In Re: Judicial Misconduct Complaint No. 01-09-90023, January 5, 2010. The petitioner did not seek further review of either of these orders.

¹Court records indicate that the petitioner has filed multiple other civil cases in the district over the past two years, including a civil rights action against three of the judges that presided over his cases.

In Complaint No. 01-09-90015, the petitioner originally alleged that the judge exhibited bias by improperly denying the petitioner's motion for a permanent injunction, instead "opting to wait for a ruling of [sic] a frivolous motion scheduled by [one of the defendants]." The petitioner further charged that the judge wrongfully denied the petitioner's motion for disqualification and improperly dismissed the case before trial. The petitioner concluded that "[n]ot only has [the judge] fail[ed] to protect the civil rights of [the petitioner], the judge himself has injured [petitioner's] civil rights"

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the petitioner's allegations constituted nothing more than a disagreement with the judge's orders. There was no evidence of bias in the case docket, the relevant pleadings, or in the court's rulings. Shortly after the petitioner filed the motion for a permanent injunction, the judge ordered the petitioner to "cease filing motions" until after a scheduled hearing in a related case. The petitioner then filed a motion to disqualify the judge contending that the judge was biased and incompetent, as evidenced, in part, by his failure to order service of process in a timely manner. The court denied this motion, noting that the "fact that plaintiff is not satisfied with the Court's order to serve process . . . is no reason to request disqualification of a judge." The court subsequently dismissed the case on the grounds that the court lacked subject matter jurisdiction and the case was time-barred.

As there was no evidence that the judge was biased or mishandled the case, Chief Judge Lynch dismissed the 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 Misconduct), Rule 11(c)(1)(C). Insofar as the complaint was based exclusively on the petitioner's

disagreement with the court's rulings, it was also dismissed as not cognizable pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

In Complaint No. 01-09-90016, the petitioner alleged that the other district judge exhibited bias by failing to act on the petitioner's informative motions, in which the petitioner notified the court of the "frivolous acts [and] attacks . . . being taken by the defendant" in another of the petitioner's cases. The petitioner next charged that this judge neglected to timely rule on the petitioner's motion to amend the complaint. Because of the judge's alleged mishandling of the petitioner's motions, and the petitioner's alleged difficulties with clerk's office staff in his other cases, the petitioner stated that he "knew where [this] . . . case was headed," and filed a motion for judicial disqualification. The petitioner charged that the judge wrongfully "[struck] his own disqualification" and improperly dismissed the case before receiving the amended complaint, "back dat[ing]" the order of dismissal. The petitioner added that the judge's purported grounds for dismissal -- that the case "fail[ed] to state an actionable cause of action against two professional associations" -- was pretextual and intended to conceal the judge's partiality for the defendants.

Chief Judge Lynch dismissed the complaint as baseless. The Chief Judge observed that the reviewed record -- including the misconduct complaint, the docket, and the relevant pleadings and court orders -- contained no evidence of judicial bias. The record indicated that the judge timely noted and ruled on the petitioner's motions before dismissing the case. In the order of dismissal, the court summarized the petitioner's claims and explained that, despite the "liberal standard [applied to] pro se pleadings," the complaint "failed to state an actionable cause of action against [two of the defendants] and is foreclosed by jurisdictional, Eleventh Amendment, and judicial immunity considerations." Nor were there any facts suggesting that the judge

misdated the order of dismissal, intentionally or otherwise. As there was no evidence of bias or other judicial wrongdoing, the complaint was dismissed as frivolous pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(C).

Chief Judge Lynch further noted that the judge was not under any ethical or legal obligation to await the amended complaint before dismissing the case. See e.g. Judicial Council of the First Circuit, Order, In Re: Complaint No. 406, December 22, 2005, at 4 (Issuance of order of dismissal prior to receipt of opposition to motion to dismiss does not alone constitute misconduct.). Accordingly, this charge was dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rule 11(c)(1)(A). Finally, insofar as the complaint was based upon the petitioner's disagreement with the court's orders -- including, but not limited to, the orders noting the informative motions, the denial of the motion for disqualification, and the order of dismissal -- it was dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

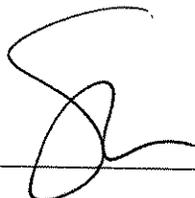
In the petition for review, the petitioner asserts that Chief Judge Lynch "erroneously dismis[s]e[d] the referenced complaints without considering the arguments presented by the [petitioner]." As to his complaint against the first judge (Complaint No. 01-09-90015), the petitioner asserts that the judge's "array of negligent orders provoked the judicial misconduct complaint" and that this "'pattern of . . . violations of the code [sic] might well rise to the level of misconduct.'" The petitioner reiterates the claim that his motion for a permanent injunction "shoud've [sic] been granted."

The petitioner continues that the other judge (Complaint No. 01-09-90016) engaged in a "similar conspiracy" in handling the petitioner's other case. The petitioner contends that his disagreements with the courts' orders "are not the basis of the judicial [misconduct] complaints

filed, rather the abusive discriminatory conduct of both judges is the main topic of the complaints filed." The petitioner states that both judges wrongfully "struck their own disqualification" and dismissed the cases, although they were "already disqualified."

Like the original complaints, the petition for review is baseless. It raises no issues beyond those thoroughly addressed by Chief Judge Lynch. As the Chief Judge explained, the petitioner provided no evidence -- in the misconduct complaints, the dockets, the pleadings, or in the courts' orders -- indicating that either of the judges was biased in handling the petitioner's cases. Absence evidence of bias -- of which there is none -- "[a]n allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related." Rules of Judicial Misconduct, Rule 3(h)(3)(A). On the present facts, neither of the judges was under any obligation to withdraw, and were not disqualified when they dismissed the petitioner's respective cases. While it is true that a pattern of violations of the Code of Conduct for United States Judges might "rise to the level of misconduct," Rules of Judicial Misconduct, Commentary on Rule 3, the petitioner has shown no violation of the Code of Conduct by either judge, much less a pattern of violations. Accordingly, the misconduct complaints were appropriately dismissed. See 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

For the reasons stated herein, the orders of dismissal issued in Judicial Misconduct Complaints Nos. 01-09-90015 and 01-09-90016 are affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary