

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90013

BEFORE

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

ORDER

ENTERED: NOVEMBER 1, 2011

Petitioner has filed a petition for review of Chief Judge Lynch's order dismissing her complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the district judge engaged in misconduct while presiding over the petitioner's civil case against a state court judge, and others.

The petitioner alleged that the judge used his "office to obtain special treatment for friends or relatives," in violation of Rule 3(h)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct).¹ The petitioner asserted that the judge prematurely ruled on the case, dismissing it only one day after it had been assigned to the judge and the state judicial defendant had filed an answer. Petitioner surmised that the court had insufficient time in which to adequately review the petitioner's pleadings and demonstrated

¹The petitioner mistakenly cited Rule 2 of the Rules of Judicial-Conduct as the source of this provision.

preferential treatment for this defendant. The petitioner concluded that the judge's dismissal of the case constituted obstruction of justice in violation of federal law.

The petitioner next alleged that, in the order dismissing the case, the judge materially misstated an allegation contained in the petitioner's amended complaint. The petitioner indicated that the judge intentionally misquoted the allegation in the amended complaint (that the state court judge had "made an attempt on [petitioner's] life") to provide the state judge with a false alibi and justify the court's dismissal of the case. Petitioner concluded that this wrongdoing constituted obstruction of justice, fraud, and other federal crimes.

Finally, the petitioner alleged that the judge's docket clerk engaged in wrongdoing by working on the case despite being personally related to an employee (with the same last name) of a defendant corporation in the proceeding.

Chief Judge Lynch dismissed the complaint. The Chief Judge first explained that the judicial misconduct complaint procedure does not provide an avenue for asserting claims of impropriety by court staff. See 28 U.S.C. § 351, and Rules of Judicial-Conduct, Rule 4. The Chief Judge further determined that the claim - that the judge's clerk was a relative of petitioner's former supervisor at the defendant corporation - was factually incorrect.

With respect to the allegations against the judge, Chief Judge Lynch observed that there was no information in the misconduct complaint or in the reviewed record - including the docket, pleadings, and court orders - indicating that the judge provided preferential treatment to the state court judge, neglected to adequately review the petitioner's submissions, or engaged in other wrongdoing. The Chief Judge noted that, as alleged by petitioner, the judge issued a memorandum and order dismissing the case the day after the matter had been reassigned to him

(from another judge) and the day after the state judge had filed a motion to dismiss. In so doing, the court stated that it was dismissing the case because the petitioner "fail[ed] to allege a 'plausible entitlement to relief.'"

As to the alleged misstatement, Chief Judge Lynch determined that the distinction between the allegation as phrased in the amended complaint and as reiterated by the court was neither material nor relevant to the court's dismissal of the case. Moreover, the Chief Judge observed that the court's order on its face showed that the judge had reviewed the petitioner's pleadings. Thus, Chief Judge Lynch found that the court's ruling was not intended to give the state judge "special treatment," and, further, that the judge had reviewed the petitioner's pleadings before issuing the order. Accordingly, the misconduct complaint was dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

The Chief Judge went on to explain that a claim that a judge committed error in a ruling does not alone provide a basis for a cognizable misconduct complaint. See Rules of Judicial-Conduct, Commentary on Rule 3. Therefore, Chief Judge Lynch noted that, even if there had been a substantive discrepancy between the amended complaint and the court's reiteration of the allegation (which there was not), there remained no evidence of improper motive that would support a claim of misconduct. Accordingly, the claim that the judge misstated the petitioner's allegation in order to undermine the success of the litigation was dismissed both as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

In the petition for review, the petitioner requests that the Judicial Council review the

original misconduct complaint, which petitioner attaches to the petition. Petitioner reiterates the charge that the judge obstructed justice and violated the Code of Conduct for United States Judges (Code of Conduct). Petitioner now extends these charges to include the Chief Judge, presumably for dismissing the misconduct complaint.

The petition for review is without merit. As concluded by Chief Judge Lynch, the misconduct complaint was presented without any factual foundation. There is no information in the complaint or in the record of petitioner's case corroborating the assertion that the judge was biased against the petitioner in favor of the state judicial defendant, neglected to adequately review the petitioner's pleadings, or intentionally misstated one of the petitioner's allegations. The court's order of dismissal summarized the chronology of the petitioner's state court litigation against petitioner's former employer, the loss of which apparently precipitated petitioner's federal court case against the state court judge and others involved with that matter. The judge assessed petitioner's legal claims in light of the governing law before determining that petitioner failed to state a claim for relief. As there is no evidence of "preferential treatment" or other improper motivation on the part of the judge, the complaint was rightfully dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).²

Absent evidence of illicit judicial motivation - of which there was none - insofar as the misconduct complaint was based upon the petitioner's disagreement with the court's order of dismissal (or with any of the factual statements contained therein), it was also properly dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct,

²While the Code of Conduct provides standards potentially applicable to judicial misconduct proceedings, see Code of Conduct, Canon 1 Commentary, the present matter does not implicate any of the provisions of the Code, let alone the judicial misconduct statute.

Rule 11(c)(1)(B).

Finally, Chief Judge Lynch appropriately determined that the claim against the judge's docket clerk was both factually inaccurate and not appropriate for consideration under the judicial misconduct statute, 28 U.S.C. § 351, *et. seq.* See also Rules of Judicial-Conduct, Rule 4

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90013 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in black ink, appearing to be 'S. Goldberg', written above a horizontal line.

Susan Goldberg, Acting Secretary