

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90034

BEFORE

Torruella, Lipez, Thompson, Circuit Judges
O'Toole and Besosa, District Judges

ORDER

ENTERED: MAY 7, 2012

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint, under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a magistrate judge in the First Circuit. The petitioner alleged that the magistrate judge engaged in misconduct while presiding over one of the petitioner's civil cases.¹

This is petitioner's second misconduct proceeding. He filed a previous misconduct complaint against two district judges alleging impropriety in connection with another of his cases. Then Chief Judge Boudin dismissed this complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and (iii). See Boudin, C.C.J., Order, In Re: Complaint No. 436, September 27, 2006. The Judicial Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re: Complaint No. 436, February 8, 2007.

In the pending matter, the petitioner alleged that the magistrate judge "committed falsity"

¹Court records indicate that the petitioner has filed four civil cases in the district court, and three appeals.

by issuing a ruling recommending the dismissal of petitioner's case. Petitioner reiterated apparent legal arguments from his case, and added that the district judge, who presided over the proceeding with the magistrate judge, had allowed petitioner to reopen the case. Petitioner included allegations that defense counsel committed perjury and that clerk's office staff engaged in a conspiracy in connection with another of petitioner's cases.

Chief Judge Lynch dismissed the complaint as baseless. As an initial matter, the Chief Judge noted that the judicial misconduct complaint procedure does not provide a mechanism for addressing wrongdoing by attorneys or court staff. See 28 U.S.C. § 351, *et. seq.* See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial-Conduct), Rule 4. That said, however, Chief Judge Lynch found no basis from which to infer that staff conspired against the petitioner or engaged in other impropriety in connection with any of the petitioner's cases.

Moreover, the Chief Judge explained that the reviewed record - including the misconduct complaint, the docket, and relevant pleadings and court orders from the case at issue - contained no suggestion of illicit animus or other judicial wrongdoing by the magistrate judge. Chief Judge Lynch observed that the petitioner's only claim - that the magistrate judge made errors of fact and law in recommending the dismissal of petitioner's case - was not cognizable. "Cognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling" Rules for Judicial-Conduct, Rule 3(h)(3)(A).

The Chief Judge pointed out that, in the recommended decision to which petitioner objected, the magistrate judge thoroughly addressed each of petitioner's claims before recommending that defendants' motions to dismiss be allowed. As there was no evidence that the

magistrate judge engaged in bias or other wrongdoing, Chief Judge Lynch dismissed the complaint as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Because the petitioner's disagreement with the substance of the magistrate judge's recommended ruling did not constitute a cognizable basis for a misconduct complaint, the Chief Judge also dismissed the complaint as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

Finally, Chief Judge Lynch explained that the fact that the presiding district judge had allowed petitioner to amend his complaint and had reinstated the case shortly after it was filed was irrelevant to the present matter. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A).

In the petition for review, the petitioner asserts that the magistrate judge denied petitioner the right to a fair "hearing and conference," and overlooked wrongdoing by defense counsel and others involved in the case. Petitioner continues that, at a specified hearing, he reported this impropriety to the magistrate judge who failed to provide the petitioner with the relief to which he was lawfully entitled. The petitioner concludes that, by exhibiting bias and impatience during this hearing, the magistrate judge violated Canon 3(A) of the Code of Conduct for United States Judges (Code of Conduct).

Finally, the petitioner, who seems to confuse the appellate process with the judicial misconduct complaint procedure, includes convoluted and virtually incoherent assertions concerning alleged conversations that petitioner had with staff of the Court of Appeals Clerk's Office. He contends that a specific intake clerk, a circuit judge and others suggested that the circuit judges and staff "do not like color[ed] and pro se litigants." Petitioner asks the Judicial

Council to review the court's order dismissing the appeal of his district court case.

The petition for review is without merit. First, as explained by Chief Judge Lynch, the judicial misconduct complaint procedure does not provide an avenue for addressing wrongdoing by attorneys or court staff. See 28 U.S.C. § 351, *et. seq.* See also Rules for Judicial-Conduct, Rule 4. It also does not offer a mechanism for obtaining relief in a pending case. See 28 U.S.C. § 354, and Rules for Judicial-Conduct, Rules 19 and 20. Nonetheless, inquiry into the new claim regarding staff indicates only that the intake clerk explained certain procedural matters to the petitioner.

Moreover, as Chief Judge Lynch determined, there is no information suggesting that the magistrate judge was biased or improperly motivated in ruling on the petitioner's case. The petitioner's claim of judicial wrongdoing is based only on his disagreement with the substance of the magistrate judge's recommended decision dismissing petitioner's case. The transcript of the hearing, which petitioner raises now for the first time, likewise offers no indication that the magistrate judge was biased, overlooked wrongdoing by defense counsel, or was remotely discourteous toward the petitioner or anyone else. To the contrary, the transcript demonstrates that the magistrate judge not only allowed the petitioner to explain his claims in full but endeavored to explain a number of legal concepts and procedural requirements to petitioner.

While 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 of Conduct, let alone the judicial misconduct statute. Accordingly, the allegations against the magistrate judge were appropriately dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C.

§ 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90034 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Gary H. Went, Secretary