

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINTS NOS. 01-11-90043 and 01-11-90044

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BEFORE

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

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ORDER

ENTERED: JUNE 11, 2012

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

The petitioner alleged that first district judge, who presided over the proceeding, intentionally delayed ruling on petitioner's motion for a temporary restraining order (TRO). The petitioner asserted that the court's order denying the motion was "deceptive" and "backdated," and that the delay constituted "an ancient pattern of illegal power" that mooted petitioner's ability to attain a meaningful remedy. Petitioner concluded that the judge was "acting in concert with other government actors" to undermine petitioner's interests.

As to the second judge, the petitioner alleged that clerk's office staff told the petitioner that, in the first judge's absence, this judge would rule on petitioner's "emergency matters . . . ." Petitioner asked that the subject judges be disciplined and removed from the petitioner's case.

Chief Judge Lynch dismissed the complaint as baseless. As an initial matter, the Chief Judge explained that the judicial misconduct complaint procedure does not afford an avenue for removing a judge or for obtaining other relief in a pending case. See 28 U.S.C. § 354(a)(2), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 20(b).

Moreover, Chief Judge Lynch observed that, absent illicit judicial motivation, "an allegation about delay in rendering a decision or ruling" is not cognizable. Rules of Judicial-Conduct, Rule 3(h)(3)(B). The Chief Judge determined that reviewed record - including the misconduct complaint, the docket, petitioner's pleadings, and the court's orders - provided no facts indicative of bias or wrongdoing by either of the judges.

Chief Judge Lynch noted that the first judge denied the motion for a TRO, several weeks after it was filed, on the grounds that it was "largely incomprehensible" and because it was unclear whether the court had jurisdiction. The Chief Judge found no information suggesting that the judge was conspiring "with other government actors," attempting to deceive the petitioner, or was otherwise improperly motivated. Nor did the Chief Judge find any facts supporting the contention that the order was misdated, intentionally or otherwise.

As there was no evidence of bias or judicial impropriety, the claim of delay was "excluded as merits-related." Rules of Judicial-Conduct, Commentary on Rule 3. Accordingly, the complaint against the first judge was 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 of Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

As to the second judge, Chief Judge Lynch found that the claim that staff made a

statement to petitioner about this judge's participation in the case was both uncorroborated and not suggestive of misconduct. As there was no indication that this judge took any part in the disposition of petitioner's case, let alone acted improperly, Chief Judge Lynch dismissed the misconduct complaint against this judge as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

In the petition for review, the petitioner reiterates his original claims that the first judge unreasonably delayed and backdated the order on petitioner's motion for a TRO. Petitioner contends that both judges retaliated for petitioner's submission of the misconduct complaint by issuing an "ex parte" order shortly after the misconduct complaint was filed in which petitioner was "threat[ened]" with arrest and torture if he "continued seeking discovery regarding illicit motives of public servants." Petitioner argues that this intimidating order is evidence of the first judge's illicit motivation and of the judge's attempt to conceal evidence that the order denying the TRO had been backdated.

The petitioner continues that Chief Judge Lynch failed to adequately investigate his misconduct allegations, instead deciding issues relevant to the misconduct complaint based solely on "hearsay." Petitioner offers other disparaging statements, proposed legal principles and describes a proposed settlement agreement in another unrelated case. Finally, the petitioner alleges that the clerk's office staff failed to send his summons as promised.

The petition for review is without merit. Chief Judge Lynch thoroughly reviewed the misconduct complaint and the case file. See Rules of Judicial-Conduct, Rules 11(a), 11(b), and Commentary on Rule 11 ("[A] matter is not 'reasonably' in dispute if . . . the allegations . . . lack any reliable factual foundation . . ."). This review elucidated no evidence whatsoever that the

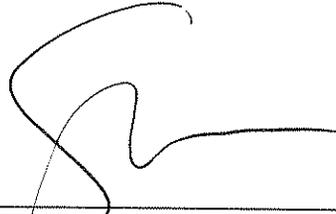
first judge misdated the court's order denying the petitioner's motion for a TRO, or was otherwise improperly motivated in handling the petitioner's case. There was also no indication that the second judge participated in the proceeding.

The petitioner offers no more evidence of impropriety at this juncture. With respect to the alleged retaliatory and threatening order, since the petitioner filed the misconduct complaint, the first judge has issued two orders requiring petitioner to serve the defendants or explain why he has failed to do so. These orders do not suggest a retaliatory motive or contain any threatening language. This allegation, like the rest of the misconduct complaint, is frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rule 11(c)(1)(C).

As Chief Judge Lynch also determined, where there is no evidence of improper judicial motivation, allegations of delay alone are not cognizable. See Rules of Judicial-Conduct, Rule 3(h)(3)(B), and Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge . . ."). Accordingly, the complaint against the first judge was also appropriately dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rule for Judicial-Conduct, Rule 11(c)(1)(B).

Finally, regarding the claim that staff of the clerk's office failed to issue summonses to petitioner, the court's order directing petitioner to serve the defendants explicitly directs staff not to issue summons, explaining that federal law requires petitioner to complete service of the primary defendant in this case. Furthermore, error by clerk's office staff - of which there is no evidence - would not constitute judicial misconduct. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005, at 3.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct  
Complaints No. 01-11-90043 and 01-11-90044 is affirmed. See Rules for Judicial-Conduct,  
Rule 19(b)(1).

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Susan Goldberg, Acting Secretary