

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90013

BEFORE

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

ORDER

ENTERED: AUGUST 14, 2012

Petitioner, an incarcerated 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 district judge. The petitioner alleged that the judge retaliated against him by reporting a letter that the petitioner had written to the judge to the United States Marshals Service (U.S.M.S.). The petitioner contended that the judge reported the letter for improper reasons.¹

Chief Judge Lynch observed that the petitioner sent the letter, which petitioner described as disparaging, to the judge after having been repeatedly directed to refrain from submitting documents pro se when represented by counsel, and during a simultaneous prosecution for sending a threatening communication to the United States Attorney's Office in an unrelated

¹This is petitioner's second misconduct complaint against this judge. In 2010, the petitioner filed a misconduct complaint alleging that the judge improperly delayed in entering the order of acquittal mandated by the Court of Appeals' reversal of the petitioner's conviction. Chief Judge Lynch dismissed this complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(B). See Lynch, C.C.J., Order, In Re: Complaint No 01-10-90020, December 1, 2010. The First Circuit Judicial Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re: Complaint No 01-10-90020, May 16, 2011.

matter.² After reviewing the letter, the Chief Judge determined that its referral to the U.S.M.S. was in accordance with court procedure and not remotely indicative of judicial wrongdoing. Accordingly, the Chief Judge dismissed the misconduct complaint, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.

In the petition for review, the petitioner reiterates the allegation contained in his first misconduct complaint, No. 01-10-90020, that the judge improperly delayed in entering the order of acquittal in his underlying criminal prosecution. See note 1, *supra*. Petitioner also restates the current claim - that the judge was improperly motivated when he reported petitioner's letter to the U.S.M.S..

In addition, the petitioner contends that, several months ago, the judge toured the prison in which petitioner is incarcerated. The petitioner asserts that, during the judge's visit, the petitioner was wrongfully segregated from the prison population and held in a "shower cell" for a number of hours. The petitioner continues that, at one point during this period, he saw the prison warden, the judge, and others through the door, and heard someone "mumble" that there was supposed to have been no direct contact (presumably between the judge and the petitioner). The petitioner asserts that he was then immediately ordered to the back of the shower cell where he waited for several more hours until he was released back into the regular prison population.

Finally, the petitioner adds that the judge further "victimized" petitioner by detaining him

²The Chief Judge also noted that court records indicated that the petitioner was the subject of several other criminal prosecutions and had filed over 50 civil cases in the district court.

for too long prior to trial, denying multiple motions, giving improper jury instructions, and "framing" the petitioner.

The petition for review is without merit. As an initial matter, both Chief Judge Lynch and the Judicial Council fully addressed the claim that was raised in petitioner's first misconduct complaint, No. 01-10-90020, concerning the court's alleged delay in entering the order of acquittal. See note 1, *supra*. The petitioner presents no new information that warrants revisiting the matter. See Boudin, C.C.J., Order, In Re: Complaint No. 430, May 23, 2006, and Boudin, C.C.J., Order, In Re: Complaint No. 445, April 5, 2007 (dismissing redundant misconduct complaints as wholly duplicative of previously disposed of matters, pursuant to 28 U.S.C. § 352(b)(1)(A)(i)).

The present issue - regarding the judge's referral of the petitioner's letter to security personnel - has also been thoroughly considered. As Chief Judge Lynch determined, the petitioner sent this letter directly to the judge in flagrant disregard of the court's direction to refrain from submitting documents pro se. Neither the form nor the substance of the letter was appropriate, and the judge's referral of it to the U.S.M.S. was, as the Chief Judge concluded, both fully consistent with court protocol and not remotely indicative of wrongdoing. Accordingly, the claim was properly dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.

As to the petitioner's new claims, he offers no evidence whatsoever that the judge played any role in either the fact of or circumstances surrounding the petitioner's alleged sequestration during the judge's prison visit. Moreover, insofar as the judge may have requested that contact

with the petitioner be avoided - which has not been demonstrated - any such request would not itself be remotely suggestive of judicial misconduct. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(C), respectively.

Finally, absent evidence of improper judicial motivation - of which there is none - the petitioner's remaining allegations concerning the petitioner's underlying criminal proceeding are not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rule for Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-12-90013 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary