

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-13-90012

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BEFORE

Torruella and Thompson, Circuit Judges  
DiClerico, Besosa and Torresen, District Judges

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ORDER

ENTERED: JANUARY 16, 2014

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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 bankruptcy judge. Petitioner alleged that the judge exhibited poor judicial temperament, improperly dismissed petitioner's case, and wrongfully communicated with a state court judge about petitioner's proceeding.

Petitioner originally alleged that, at a motion hearing, the judge "mocked" petitioner by "laughing at" him at the conclusion of the hearing, after orally dismissing his bankruptcy petition. Petitioner contends that this "mockery" demonstrated an inferior "judicial temperament."

Petitioner further asserted that, by dismissing the proceeding, the judge refused to "apply the equitable powers of the laws" against the bank, a creditor in the case, instead engaging in "mockery" of petitioner.

Finally, petitioner contended that, in violation of federal law and the canons of judicial ethics, the judge improperly communicated about petitioner's bankruptcy case with a state court

judge who was presiding over a related proceeding. Petitioner asserted that, during a hearing in the state court case, the judge responded to petitioner by stating that "this is not what [the bankruptcy judge] said to her . . . ," and then "stopped herself when she realized what she was admitting."

Based on the results of a limited inquiry, conducted pursuant to Rule 11(b) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Chief Judge Lynch dismissed the misconduct complaint. The inquiry included a review of the docket, pleadings, and court orders entered in the bankruptcy case, as well as listening to the audio recordings of both the motion hearing before the bankruptcy judge and the relevant state court hearing.

Chief Judge Lynch first observed that the judge was calm, polite and patient throughout the hearing on the trustee's motion to dismiss. The Chief Judge noted that, while the court stated that it was not persuaded by petitioner's arguments, it heard from petitioner in full before granting the motion, dismissing the case and concluding the hearing. The contention that the judge laughed at or mocked petitioner, after rendering the order, "as he got up to leave," was not verified by the audio recording of the hearing. Chief Judge Lynch found no record that the judge laughed at all, or that, if he did, it was in any way related to petitioner or his case. Accordingly, this claim was dismissed as unsupported, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

Chief Judge Lynch determined that the related allegation - that the judge improperly applied the law - was not cognizable. This assertion reflected only petitioner's disagreement with the judge's decision to allow the trustee's motion to dismiss the proceeding. Since "[c]ognizable

misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling . . .," Rules of Judicial-Conduct, Rule 3(h)(3)(A), the Chief Judge dismissed this claim as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

Chief Judge Lynch determined that petitioner's final assertion - that the judge improperly communicated with a state court judge about petitioner's case - was conclusively refuted by the record. The audio recording of the state court hearing disproved petitioner's claim. The Chief Judge observed that the presiding state court judge referred only to the bankruptcy court's public order dismissing the bankruptcy petition and made no mention of any other communication from the bankruptcy judge concerning petitioner's case or any other matter. Accordingly, Chief Judge Lynch dismissed this claim as conclusively refuted by the record, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

In the petition for review, the petitioner asserts that Chief Judge Lynch's review of the misconduct complaint "was not objective." Petitioner reiterates the three claims - that the bankruptcy judge "was seen laughing as he left the courtroom," that the state court judge indicated that the bankruptcy judge had spoken to her about the case, and that the bankruptcy judge improperly dismissed petitioner's proceeding and issued erroneous rulings. As to the first of these, petitioner asks that the video of the motion hearing be reviewed, as he had seen a camera facing the judge in the courtroom.

Petitioner adds that the judge engaged in a "dereliction of duty," by dismissing the case before ruling on petitioner's pending motions. Petitioner argues that the judge was motivated by a conflict of interest and that the court's transfer of petitioner's latest case to another judge

corroborates petitioner's claims of wrongdoing. Petitioner concludes that he objected to the judge's "actions not demeanor [as t]hose engaging in fraud and misconduct have the best demeanor to match their scheme."

The petition for review is baseless. First, in the petition for review, petitioner presents claims of wrongdoing by the state court judge who presided over petitioner's related litigation. These are not cognizable in the present context. See 28 U.S.C. § 351, *et. seq.*, and Rules of Judicial-Conduct, Rule 4. Moreover, the petition for review provides no basis for questioning the Chief Judge's determinations in the underlying misconduct complaint against the bankruptcy judge.

As the Chief Judge observed, the record provides no evidence that the judge laughed at, mocked or otherwise treated petitioner improperly at the referenced hearing. The audio recording was reviewed in full. As to the camera petitioner references, court staff have explained that any visual recording would have been for security purposes only and not retained. Even assuming that, as alleged, the judge laughed off the record as he exited the courtroom, there is no evidence whatsoever that any such reaction, if it in fact occurred, was directed at petitioner or his case.

The claim that the state court judge, whom petitioner now also charges with impropriety, stated during the cited hearing that the bankruptcy judge had improperly spoken to her about petitioner's case was, as the Chief Judge determined, disproved by the audio recording. Accordingly, the misconduct complaint was appropriately dismissed, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

The reviewed record remains devoid of any information indicating that the bankruptcy

judge was biased in favor of the financial creditor in the case or harbored a conflict of interest or any other illicit motivation. The fact that the judge reassigned petitioner's latest case to another judge is not evidence of these conclusory assertions. Where, as here there is no evidence of improper judicial motivation, the claims arising from petitioner's disagreement with the orders issued in the case (including the dismissal of the proceeding which mooted any other pending matters) were appropriately dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-13-90012 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

  
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Gary H. Wentz, Secretary