

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-13-90016

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BEFORE

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

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ORDER

ENTERED: APRIL 16, 2014

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Petitioner, a pro se plaintiff in a civil proceeding, 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 the presiding magistrate judge. The magistrate judge presided over all proceedings in the matter by consent, pursuant to 28 U.S.C. § 636(c).

Petitioner originally alleged that the magistrate judge failed to "exercise appropriate professional diligence in performing his duties as a federal judge, in violation of Canon 3(B) of the Code of Conduct for United States Judges." The petitioner further contended that the magistrate judge's "disregard for basic judicial practices has had a prejudicial impact on [petitioner's] rights" and demonstrated a "blatant disrespect for the law and the litigants in the case." Petitioner added that the magistrate judge's actions gave "an appearance of impropriety" and undermined "public confidence in the integrity and impartiality of the judiciary," in violation of Canon 2(A) of the Code of Conduct.

Petitioner objected to the magistrate judge's orders denying petitioner's motion for leave

to file an amended complaint and dismissing petitioner's case. Specifically, petitioner alleged that the dismissal order contained a typographical mistake - an erroneous citation to an internet page defining a term which petitioner contended was central to his case. Petitioner asserted that the use of a definition from this internet source in a court order, a typographical error in the citation, and the magistrate judge's "refusal" to acknowledge and correct the error by allowing petitioner's motion to reopen the case constituted "highly unprofessional misconduct." Finally, petitioner asked that the court adopt rules prohibiting the use of the internet source and then reopen his case before a different judge.

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge first noted that the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for either modifying court rules or for obtaining a different judge in a pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19. The Chief Judge then explained that a violation of the Code of Conduct for United States Judges may inform consideration of judicial misconduct complaints, but that a violation of the Code does not necessarily constitute judicial misconduct under the statute. See Rules of Judicial-Conduct, Commentary on Rule 3.

Based on a review of the docket, pleadings and orders issued in the case, Chief Judge Lynch determined that there was no violation of the Code of Conduct and that the misconduct complaint was not cognizable. See Rules for Judicial-Conduct, Rule 11(b) (providing for a limited inquiry by the chief judge in determining what action to take in response to a judicial misconduct complaint).

The Chief Judge observed that, in response to the defendants' motion to dismiss, the

magistrate judge issued a lengthy memorandum and order in which the court thoroughly analyzed each of the petitioner's legal claims before determining that the petitioner did not present a viable cause of action. The order of dismissal was upheld on appeal for substantially the same reasons as articulated by the magistrate judge.

The Chief Judge further noted that, in denying the petitioner's motion to amend the complaint, the magistrate judge observed that the proposed amended complaint did not alter the analysis that resulted in the dismissal of petitioner's case. Finally, the Chief Judge added that the magistrate judge denied petitioner's motion to reopen the case (in which petitioner pointed out the citation error) because, in the court's view, it was untimely and failed to establish sufficient grounds for the relief sought.

The Chief Judge explained that petitioner's contention - that he would have attained a different result on appeal without the typographical error - does not evidence judicial misconduct. As there was no information suggesting that the magistrate judge was improperly motivated in issuing the rulings to which petitioner objected, Chief Judge Lynch dismissed the misconduct complaint as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also Rules for Judicial-Conduct, Commentary on Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge - without more - is merits-related.").

Since the petitioner failed to provide any evidence of misconduct or other impropriety by the magistrate judge, the Chief Judge also dismissed the misconduct complaint pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

In the petition for review, petitioner asserts that Chief Judge Lynch "misconstrues" the

misconduct complaint and "appears to deliberately skirt around serious ethical issues concerning [the] citations." Petitioner reiterates his assertions that the magistrate judge's citation from this on-line source, the erroneous quotation that "favor[ed]" the defendants, and the refusal to acknowledge the typographical error demonstrate a lack of "appropriate professional diligence," and create "an appearance of impropriety," in violation of the Code of Conduct for United States Judges. Petitioner adds that the magistrate judge "handle[d] the correction of [his] mistakes inappropriately and unethically." Petitioner cites to the Federal Judicial Center's Law Clerk Handbook: A Handbook for Law Clerk to Federal Judges as purported evidence that the magistrate judge disregarded appropriate citation standards.

Petitioner further surmises that, in potential pursuit of future employment with "prestigious law firms," such as defense counsel in the case, the magistrate judge had "a strong financial incentive not to alienate his or her potential future employers." Petitioner infers that these considerations may explain the magistrate judge's "puzzling motivation for refusing to admit what would seem to be a minor set of errors . . . ." Finally, petitioner adds that the relief he seeks is appropriate under 28 U.S.C. § 352(b)(2), as part of "appropriate corrective action."

The petition for review, like the original misconduct complaint, provides no facts suggestive of a violation of the Code of Conduct or of the judicial misconduct statute, 28 U.S.C. § 351, *et. seq.* As the Chief Judge observed, the petitioner presents no evidence that the magistrate judge was improperly motivated in issuing the rulings to which petitioner objects or otherwise in connection with the case. Petitioner's dubious speculation that the magistrate judge deliberately misquoted a definition in the pursuit of future employment is not supported by any

facts whatsoever.<sup>1</sup>

As Chief Judge Lynch observed, the magistrate judge issued a lengthy memorandum and order, based exclusively on the record in the case, dismissing the proceeding, and the order was affirmed on appeal. Contrary to petitioner's assertion, the magistrate judge's subsequent determination that petitioner failed to establish sufficient grounds to warrant post judgement relief does not suggest a violation of the Code, let alone judicial misconduct.

As the Chief Judge correctly noted, the petitioner does nothing more than "call . . . into question the correctness of a judge's ruling[s] . . ." Rules of Judicial-Conduct, Rule 3(h)(3)(A). An alleged "minor set of errors," as petitioner calls them, does not constitute cognizable misconduct. Accordingly, the misconduct complaint was appropriately dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as factually unsupported, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and Rule 11(c)(1)(D), respectively.

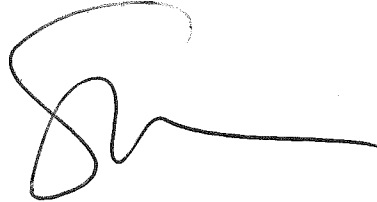
Finally, petitioner's request for corrective action under to 28 U.S.C. § 352(b)(2) presupposes a problem that needs to be remedied. See Rules of Judicial-Conduct, Rule 11(d)(2) (The Chief Judge may conclude a complaint proceeding when the "subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint."). As no "problems" have been identified in the present matter, petitioner's request for corrective action remains inapposite. Accordingly, the misconduct complaint was

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<sup>1</sup>Petitioner's reliance on the Law Clerk Handbook does not evidence judicial error, let alone the type of wrongdoing that might suggest cognizable misconduct. See Law Clerk Handbook: A Handbook for Law Clerks to Federal Judges, (Sylvan A. Sobel ed., Federal Judicial Center 2007) (1977), at ix (The Law Clerk Handbook is intended to "provide[] an overview of chambers operations and the work of the federal courts" and advises law clerks to "become familiar with local court procedures and inquire about a local chambers manual.").

appropriately dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-13-90016 is affirmed. See Rules for Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line extending to the right.

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Susan J. Goldberg, Acting Secretary