

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-10-90012

BEFORE

Lipez and Thompson, Circuit Judges,
Lisi, Gelpi, and Laplante District Judges

ORDER

ENTERED: JANUARY 5, 2011

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

The petitioner alleged that the judge improperly remanded the petitioner's case. He stated that the judge ordered the case remanded on the ground that the record did not contain a necessary medical opinion. The petitioner contended that this decision was erroneous because the relevant opinion was, in fact, included in the record. The petitioner concluded that the court's ruling violated his constitutional right to litigate his case.

The petitioner further charged that the judge improperly denied him the opportunity to oppose the defendant's motion for remand, and failed to advise him, as a pro se litigant, of the "legal course of action" for objecting to the court's order.

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the reviewed record -- including the misconduct complaint, the docket, the relevant pleadings and the remand order -- provided no evidence that the judge was improperly motivated in issuing the order of remand or otherwise. Chief Judge Lynch observed that the relevant order explained the need for an updated medical evaluation and remanded the case for the purpose of obtaining the requisite information. As there was no evidence of bias or improper judicial motivation in the order or elsewhere in the record of the case, the complaint was dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(C). Insofar as the complaint was based exclusively on the petitioner's disagreement with the order of remand, it was also 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).

Chief Judge Lynch dismissed the related charge -- that the judge denied the petitioner the opportunity to oppose the defendant's motion for remand -- as frivolous. The Chief Judge observed that the petitioner failed to oppose the motion during the approximately 40 days it was pending before the court allowed it. Chief Judge Lynch dismissed the claim that the judge interfered with the petitioner's ability to file such an opposition as baseless. See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

Finally, Chief Judge Lynch explained that the judge was not under any legal or ethical obligation to advise the petitioner on how to object to the court's order of remand or to otherwise provide him legal advice. This charge was, therefore, dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

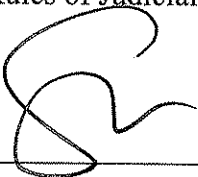
In the petition for review, the petitioner asserts that, by wrongfully dismissing the misconduct complaint, Chief Judge Lynch interfered with the petitioner's exercise of his

constitutional rights and violated the Code of Conduct for United States Judges. The petitioner reiterates his original charges that he was denied the opportunity to respond to the defendant's motion for remand and to object to the order of remand. The petitioner states that he was not notified of the motion until he received the court's order allowing it. The petitioner also charges that Chief Judge Lynch wrongfully "denied the credibility" of his physician whose report had been submitted.

The petition for review is without merit. As determined by Chief Judge Lynch, the complaint and the reviewed record are devoid of evidence of judicial bias or other improper motivation. Absent such evidence, the petitioner's challenge to the court's order remanding the case is not cognizable. The complaint was properly 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)(C).

While the defendant's certificate of service indicates that the motion for remand was mailed to the petitioner, any error in this regard would not suggest judicial misconduct. Nor, as the Chief Judge explained, was the judge under any duty to advise the petitioner on how to object to the court's order of remand. Therefore, the complaint was also properly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A). Finally, the Chief Judge's order of dismissal does not remark on the "credibility" of the petitioner's physician.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-10-90012 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary