

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-10-90024, 01-10-90025, and 01-10-90026

BEFORE

Howard and Thompson, Circuit Judges,
Saris, Woodcock and Laplante, District Judges

ORDER

ENTERED: AUGUST 2, 2011

Petitioner 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 three appellate judges in the First Circuit. The three judges composed the panel that dismissed the appeal of complainant's criminal conviction.¹

The petitioner originally alleged that the presiding appellate panel engaged in misconduct when it ruled prematurely in the petitioner's case. The petitioner stated that, after the Court allowed the government's motion to extend the time in which to file its brief, it improperly ruled

¹The petitioner's criminal proceeding in federal district court was the subject of a previous misconduct complaint that the petitioner filed in 2008. See Misconduct Complaint No. 01-08-90011. In that matter, the petitioner had alleged, in part, that the district judge had issued erroneous rulings that evidenced bias against the petitioner. By order, dated July 17, 2008, Chief Judge Lynch dismissed Complaint No. 01-08-90011, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See Lynch, C.C.J., Order, In Re: Complaint No. 01-08-90011, July 17, 2008. The First Circuit Judicial Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re: Complaint No. 01-08-90011, January 29, 2009.

in the case -- affirming the dismissal of the petitioner's motions challenging his conviction -- before the government had submitted the brief. The petitioner concluded that this ruling violated cited case law, constituted misconduct, and required the Court to "recall its mandate."

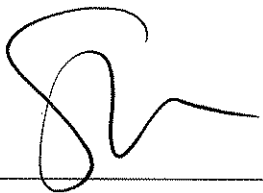
Chief Judge Lynch dismissed the complaint. The Chief Judge observed that the reviewed record -- including the complaint, the docket, and relevant court orders -- demonstrated that the Court entered judgment in the case in response to the government's motion for summary disposition of the appeal which had been filed before the order extending the time for the government to submit its brief. Chief Judge Lynch explained that the Court was under no legal or ethical obligation to await appellee's brief before ruling on the motion for summary disposition. The Chief Judge determined that the petitioner's disagreement with the substance of the judgment entered in the case did not constitute a claim of cognizable misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A). Accordingly, the complaint was dismissed as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and as unfounded, 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)(C).

In the petition for review, the petitioner restates the original claim that the Court improperly dismissed the appeal before the government had filed its reply brief. The petitioner further argues that the judges have violated the Code of Conduct for United States Judges, specifically Canon 3(B)(3), by failing to comply with their own order (mandating the submission of the government's brief by a specific date). The petitioner cites to the order allowing the government's motion to extend the time to file its reply brief, and concludes that the judges engaged in "intentional misconduct . . . by failing to stand by their very own Court Orders" in

violation of petitioner's right to due process.

The petition for review is without merit. The misconduct complaint, the petition for review and the reviewed record are devoid of any evidence of judicial wrongdoing. As Chief Judge Lynch explained, the order allowing the government additional time in which to file a reply brief in no way prohibited the Court from considering the government's previously filed motion for summary disposition. It was in response to this motion that the Court issued judgment affirming the order of the district court. As there is no evidence of bias or impropriety, the complaint was appropriately dismissed as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as directly related to the merits, 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.²

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints Nos. 01-10-90024, 01-10-90025, and 01-10-90026 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a short tail.

Susan Goldberg, Acting Secretary

²While a violation of the Code of Conduct of United States Judges may provide standards useful in consideration of judicial misconduct complaints, see Rules of Judicial-Conduct, Commentary on Rule 3, the present matter provides no indication of a violation of the Code, let alone of judicial misconduct.