

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-10-90027

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BEFORE

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

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ORDER

ENTERED: JUNE 21, 2011

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Petitioners, debtors in a bankruptcy proceeding, have 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 bankruptcy judge in the First Circuit. The petitioners alleged that the judge engaged in misconduct while presiding over their Chapter 7 proceeding and related adversary cases.

The misconduct complaint at issue is the third that the petitioners have filed concerning their bankruptcy proceedings. Chief Judge Lynch dismissed the first two complaints, Nos. 01-10-90010 and 01-10-90011, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), 352(b)(1)(A)(iii), and 352(b)(1)(B). See Order, C.C.J., In Re: Complaints Nos. 10-10-90010 and 01-10-90011, June 29, 2010. (The petitioners did not file a petition for review in these matters.)

In the present complaint, the petitioners reiterated two of the allegations presented in an earlier complaint and presented two different but related claims. They first reiterated the charge

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that the judge unlawfully ordered the conversion of the case from a Chapter 13 to a Chapter 7 proceeding despite the fact that the petitioners had established that they could "pay all claims in full." The petitioners next reiterated the claim that the judge wrongfully approved the stipulation agreement that the trustee submitted to the court.

The petitioners further alleged that the judge issued an order to show cause why the case should not be converted to Chapter 7, in order to intentionally and unreasonably delay the petitioners' right to "defend and protect [their] property." Lastly, the petitioners claimed that the judge issued "bogus and erroneous order[s]" in an adversary proceeding that the Chapter 7 trustee filed. The petitioners contended that the trustee lacked standing to raise the allegations of criminal conduct presented in the case, and the court lacked jurisdiction to hear them. The petitioners concluded that the judge's "recklessness and incompetence" caused them to wrongfully lose their home.

Chief Judge Lynch dismissed the complaint. Chief Judge Lynch determined that the petitioners alleged nothing more than court orders with which they disagreed as purported evidence of misconduct. The Chief Judge found no evidence of any improper judicial motive in connection with either the court's order of conversion or its acceptance of the settlement stipulation. Accordingly, these claims were again dismissed as lacking factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.

Chief Judge Lynch determined that the related claim -- that the judge issued the show cause order in order to intentionally delay the petitioners' exercise of their rights -- was also

presented with no basis in fact. The Chief Judge explained that the show cause order allowed the petitioners the opportunity to be heard on the issue of the conversion before the court issued its ruling. Thus, the allegation that this order demonstrated judicial bias or other wrongdoing was dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules of Judicial-Conduct, Rules 11(c)(1)(C).

The Chief Judge further ascertained that the reviewed record -- including the misconduct complaint, the docket, pleadings and orders issued in the case -- provided no evidence of bias or other judicial animus in connection with the judge's handling of the referenced adversary proceeding. Chief Judge Lynch observed that the trustee had initiated that proceeding against the party to whom the petitioners had allegedly fraudulently conveyed their property. The record indicated that the judge addressed the issues raised in the adversary case in conjunction with the petitioners' lead case, and issued judgment in accordance with the accepted stipulation. As there was no evidence of bias or other wrongdoing, Chief Judge Lynch dismissed the allegation that the judge issued erroneous rulings in this case as directly related to the merits, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

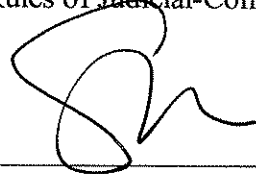
In the petition for review, the petitioners state that they are not seeking to "overturn" the judge's orders but to determine whether the judge "faithfully complied with his fiduciary duties relative to enforcing/upholding the statutes, court rules, established case law . . . and the judicial cannons [sic]." Citing hearing transcripts, statutory language and apparent case law, the petitioners restate the allegation that the judge disregarded the "statutory requirements under the Bankruptcy Code" and other federal law when the court "consistently denied or ruled against" the petitioners without adequate explanation. Specifically, the petitioners reiterate their disagreement with the court's acceptance of the stipulation agreement which, they contend, reflected criminal

conduct by the trustee. The petitioners conclude that the judge has exhibited "wanton disregard for the statutory requirements under . . . the United States Code," and improperly disregarded criminal conduct by the trustee, in violation of the "public interest."

The petition for review is baseless. As Chief Judge Lynch has repeatedly explained, disagreement with the substance of rulings issued in a case does not constitute a cognizable complaint of judicial misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) (Cognizable misconduct does not include an allegation "that calls into question the correctness of a judge's ruling . . ."). The appellate process, not the judicial misconduct procedures, offers redress for allegedly incorrect judicial rulings.

With respect to the court's acceptance of the stipulation agreement (which is the only order specifically challenged in the petition for review), the judge decided, after an evidentiary hearing, that the petitioners "failed to establish . . . duress or other cause to vacate. . . the settlement agreement." As determined by Chief Judge Lynch, there is no evidence that this or any other court order issued in the petitioners' cited cases was improperly motivated. Nor do the petitioners demonstrate that the judge intentionally overlooked wrongdoing by the trustee. Therefore, Chief Judge Lynch appropriately dismissed the complaint as unfounded, pursuant to 28 U.S.C. § 352(b)(1)(B), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(D) and 11(c)(1)(B), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-10-90027 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



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Susan Goldberg, Acting Secretary