

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-10-90029, 01-11-90005, 01-11-90009, and 01-11-90010

BEFORE

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

ORDER

ENTERED: JULY 20, 2011

Petitioner has filed a petition for review of Chief Judge Lynch's order dismissing four complaints under the Judicial Conduct and Disability Act, 28 U.S.C. § 351(a), against a bankruptcy judge in the First Circuit. The four misconduct complaints, filed between December 2010 and March 2011, stemmed from the judge's handling of a Chapter 7 bankruptcy proceeding in which the petitioner appears as a creditor. The Chief Judge dismissed these complaints concurrently.

The original misconduct complaints presented numerous allegations of bias, misconduct, delay, and disability that Chief Judge Lynch found to be without merit. The Chief Judge addressed each of the petitioner's claims, as follows.

Disability and Delay

The petitioner alleged that the judge was agitated, interrupted the petitioner, issued erroneous rulings, and failed to handle the case expeditiously. The petitioner asserted that the

judge failed to promptly address a specific pleading and failed to notify the parties that a scheduled hearing had been cancelled until they appeared in court on the appointed day. The petitioner asserted that this behavior reflected both a disability and misconduct on the part of the judge.

Chief Judge Lynch found no evidence in support of these claims. The Chief Judge determined that the record demonstrated that the judge ruled thoughtfully and expeditiously on the multitude of redundant and often incomprehensible pleadings that the petitioner had submitted.¹ The Chief Judge observed that the judge had held over 10 hearings and ruled systematically on all pending matters. As the allegations of disability and delay were presented with no basis in fact, Chief Judge Lynch dismissed them, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). The Chief Judge further noted that cognizable misconduct does not include "an allegation about delay in rendering a decision or ruling . . . ," Rules of Judicial-Conduct, Rule 3(h)(3)(B), that the court's cancellation of a hearing would not alone suggest disability or misconduct, see 28 U.S.C. § 352(b)(1)(A)(i), and Rules for Judicial-Conduct, Rule 11(c)(1)(A), and that, regardless, the court had in fact rescheduled the cited hearing in advance of the scheduled date and issued the appropriate notices.

Bias

The petitioner alleged that the judge exhibited bias against her and the debtor by failing to appoint the petitioner as trustee. The petitioner contended that the judge conspired with the U.S. Trustee's Office to appoint the judge's "preferred panelist . . . ," and then conspired with the

¹As of the time the complaints were reviewed, the petitioner had filed over 100 motions, responses and objections, many over 30 pages in length, and some over 100 pages, many of which were virtually nonsensical.

trustee and his counsel to issue erroneous rulings. The petitioner asserted that the judge and the trustee went to law school together, and that the judge had stated that he is the "best trustee" in the Circuit.

The petitioner further charged that, when she rightfully challenged the appointment of the trustee, the court told the petitioner that her charges were frivolous and threatened to impose sanctions if she continued to complain about the trustee. The petitioner asserted that the police informed her that the judge "is part of the corruption."

Chief Judge Lynch determined that the claim of judicial bias was baseless. The Chief Judge found no facts in the misconduct complaint or in the reviewed record indicating that the judge was prejudiced against the petitioner or the debtor, or otherwise lacked impartiality in connection with the proceeding. The Chief Judge further noted that the trustee had been appointed by the previous judge. (The judge charged in the present matter is the third judge to preside over the proceeding.)

Chief Judge Lynch further observed that the record demonstrated that the judge imposed sanctions on the petitioner because the petitioner had "filed an incessant stream and array of voluminous motions, objections and responses, many of which [were] duplicative and frivolous . . . [and] contain[ed] defamatory allegations and incomprehensible requests for relief." Thus, the claim that the court sanctioned the petitioner for challenging the appointment of the trustee was dismissed pursuant to 28 U.S.C. § 352(b)(1)(B), and Rules for Judicial-Conduct, Rule 11(c)(1)(D).

Tone and Opportunity to Be Heard

The petitioner alleged that the judge's tone was "harsh" toward the debtor, but "outright

abusive" toward the petitioner. The petitioner referenced three hearings, and charged that, on one occasion, the judge allowed a convicted felon, who was not a party to the case, to speak for two minutes but "complained about the number and length of [petitioner's] pleadings," and, during another hearing, "lost total emotional control in the courtroom and was screaming at [petitioner]."

Chief Judge Lynch determined that the audio recordings of the relevant hearings demonstrated that the judge's tone was not remotely indicative of misconduct, that the judge observed appropriate courtroom decorum, and heard from all parties in full while reasonably exercising the court's discretion to maintain an orderly environment. The Chief Judge observed that, during the first cited hearing, for which the court allotted three (3) hours, the judge clearly instructed the petitioner not to interrupt the judge. Chief Judge Lynch explained that neither this direction, nor allowing the referenced individual (who had filed a notice of appearance as an interested party) to address the court, constituted misconduct.

Chief Judge Lynch further pointed out that, at the second referenced hearing, the judge instructed the petitioner to limit her argument to issues that had not been the subject of previous orders. When the petitioner failed to do so, the judge instructed the petitioner to "sit down."

The Chief Judge remarked that, at the third hearing, the judge heard from petitioner in full before ruling that the petitioner was in contempt of the court's previous order (requiring her to submit the requisite fees and refrain from filing frivolous pleadings). When the petitioner continued to disrupt the proceedings, the judge requested the assistance of court security officers to escort the petitioner from the courtroom. Chief Judge Lynch noted that the judge's tone remained calm and measured throughout.

Chief Judge Lynch concluded that, at no time did the judge "lose . . . emotional control," or treat the petitioner in an "abusive" manner. The Chief Judge noted that, in light of the petitioner's conduct, the court showed consistent patience and restraint, and that the judge's tone was not remotely inappropriate, let alone indicative of misconduct. See also Boudin, C.C.J., Order, In Re: Complaint No. 444, January 23, 2007, at 4 ("[A]bsent extraordinary circumstances, the tone maintained by the judge during a proceeding is not a basis for a finding of misconduct."), and Boudin, C.C.J., Order, In re: Complaint No. 320, January 14, 2002, at 4. Chief Judge Lynch concluded that, in the present matter, the judge did not verbally attack the petitioner or otherwise engage in conduct that even approached the "bounds of propriety." Id. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial-Conduct, Rule 11(c)(1)(A).

Ex Parte Communication, Neglect, and Erroneous Rulings

The petitioner included a charge that the judge engaged in improper ex parte communication with an identified attorney who was not on record as counsel in the case. The petitioner added that the court did not read her pleadings and failed to hold evidentiary hearings. The petitioner concluded that the judge issued erroneous rulings allowing for the liquidation of the estate, denying the petitioner's motions to recuse the judge, and prohibiting her from filing pleadings.

Chief Judge Lynch determined that the claims of ex parte communication, inattention, and erroneous rulings were baseless. The Chief Judge found no evidence that the judge engaged in improper ex parte communication with the referenced individual or anyone else. Chief Judge Lynch further reasoned that, given the number of lengthy hearings and comprehensive orders issued in response to the petitioner's submissions, the contention that the court neglected to

adequately attend to the petitioner's pleadings was utterly without merit. See 28 U.S.C. § 352(b)(1)(A)(iii), and Rules for Judicial-Conduct, Rule 11(c)(1)(C).

Finally, insofar as the complaints derived from the petitioner's disagreement with the substance of the court's rulings in the case, they were dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii), and Rules for Judicial-Conduct, Rule 11(c)(1)(B).

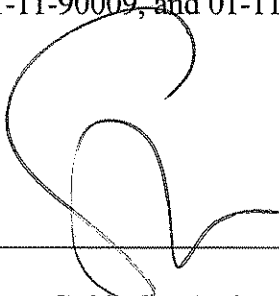
In the petition for review, the petitioner asserts that Chief Judge Lynch is "incompetent" because she failed to "reprimand and remove [the judge] from the bench." The petitioner also contends that Chief Judge Lynch was also obligated to reprimand a specific state court judge.

The petitioner details her alleged qualifications for serving as trustee, and reiterates the claim that the judge is "unstable," and suffers from a "mood disorder" that causes the judge to issue erroneous rulings. The petitioner states that the judge's order of contempt and failure to waive the petitioner's filing fee are examples of these illicit rulings, and adds that the judge has wrongfully ordered the federal marshals to "stalk [sic]" her in violation of her civil rights. The petitioner also restates the allegation that the judge has been improperly influenced by a former law partner and the trustee. The petitioner concludes that an unidentified newspaper article corroborates her claim that the judge is "corrupt." The petitioner requests the resignation of the "Chief Justice."

The petition for review, like the original misconduct complaints, contains no information supporting the petitioner's myriad of allegations against the bankruptcy judge. As Chief Judge Lynch appropriately determined, the record of the proceeding, including the audio recordings of the cited hearings, demonstrates that the judge promptly ruled on the multitude of pleadings in the case while appropriately exercising the court's discretion to manage the courtroom

environment. The record is likewise devoid of any facts suggesting that the judge was improperly influenced by the trustee or anyone else, was biased, engaged in improper ex parte communication, or suffered from a disability. As to the claim regarding the state court judge, the petitioner has been repeatedly informed that he is not under the jurisdiction of the federal misconduct statute, 28 U.S.C. § 351. Accordingly, Chief Judge Lynch appropriately dismissed the complaints, 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 also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), 11(c)(1)(C), and 11(c)(1)(D), respectively.

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaints Nos. 01-10-90029, 01-11-90005, 01-11-90009, and 01-11-90010 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).



Susan Goldberg, Acting Secretary