

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90004

BEFORE

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

ORDER

ENTERED: OCTOBER 3, 2011

Petitioner 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 a magistrate judge in the First Circuit. The petitioner alleged that the magistrate judge failed to report misconduct by defense counsel in the petitioner's case.

The petitioner alleged that misconduct by defense counsel was brought to the magistrate judge's attention when the court issued a report and recommendation in the petitioner's case. The petitioner did not indicate how or in what form this information was presented to the court, but stated that the magistrate judge wrongfully failed to notify the appropriate bar association or disciplinary board of the attorney's "dishonesty, fraud, deceit, misrepresentation, and [prejudicial] conduct"

Chief Judge Lynch dismissed the misconduct complaint. The Chief Judge explained that the petitioner failed to identify the alleged impropriety by defense counsel, let alone how this

information was presented to the court. Chief Judge Lynch observed that there was no indication on the docket of any relevant pleading or submission.

The Chief Judge also determined that there was no need to address whether the allegation, if substantiated, would even state a claim of misconduct. As there was no evidence in support of the claim that the magistrate judge failed to report misconduct by defense counsel, the Chief Judge dismissed it as baseless, 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 misconduct complaint was based upon the petitioner's disagreement with the magistrate judge's recommended ruling, or with any other orders issued in the case, it was also dismissed as not cognizable, 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 petitioner restates the original claim that the magistrate judge failed to address misconduct by the attorney who represented the respondent in the petitioner's case. Petitioner contends that the magistrate judge should have issued a decision finding that the attorney's "purpose was to deceive and engage in deceit, dishonesty, fraud, misrepresentation, and prejudicial conduct . . . , and notify the appropriate . . . disciplinary body of the misconduct." The petitioner concludes that Chief Judge Lynch's order of dismissal used an "error of judicial judgment" to effectively condone the misdeeds of defense counsel.

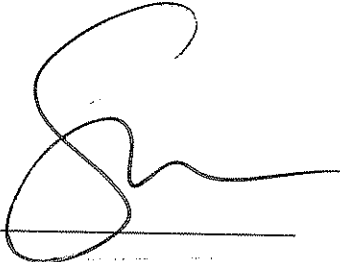
The petition for review is without merit. The petition for review, like the original complaint, offers no facts that substantiate the assertion that the magistrate judge failed to report wrongdoing by defense counsel. The magistrate judge issued a lengthy report and recommended

ruling dismissing the petitioner's case without prejudice which the presiding district judge adopted.

As the Chief Judge observed, the reviewed record contains no evidence of misconduct by defense counsel, much less any indication of how and when this alleged impropriety was conveyed to the magistrate judge. Lacking factual substantiation, the misconduct complaint was appropriately dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

As there was no evidence of illicit judicial motivation, insofar as the misconduct complaint was based upon the petitioner's disagreement with the magistrate judge's recommended ruling or with other orders issued in the case, it was also properly dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-11-90004 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

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Susan Goldberg, Acting Secretary