

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-11-90012

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BEFORE

Boudin and Howard, Circuit Judges,  
O'Toole, Woodcock, and Laplante, District Judges

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ORDER

ENTERED: DECEMBER 14, 2011

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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 district judge in the First Circuit. The petitioner alleged that the district judge engaged in misconduct while presiding over the petitioner's criminal trial on a number of firearms, robbery and conspiracy charges.

The petitioner alleged that, during his jury trial, the judge knowingly allowed the government to present "manufactured evidence" linking petitioner to the robbery and conspiracy with which he was charged. The petitioner contended that the judge knew that this evidence conflicted with that presented during the earlier trial of two of petitioner's co-defendants, over which the same judge had also presided, and with the grand jury testimony of a key witness. The petitioner asserted that the original evidence would not have been sufficient to sustain the petitioner's conviction. The petitioner concluded that the judge "used his bench to allow and

protect the corruption perpetrated by the prosecutor . . . to frame petitioner as being complicit in the robberies . . . ."

Chief Judge Lynch dismissed the complaint. The Chief Judge determined that the petitioner provided no facts in support of the claim that the judge knowingly allowed the introduction of perjured testimony or "manufactured evidence" during the petitioner's trial. Chief Judge Lynch noted that the judge had presided over the trial of two of the petitioner's co-defendants several months before the petitioner's trial. But the Chief Judge found that the reviewed record - including the misconduct complaint, dockets, relevant pleadings, court orders, and transcript segments (provided by petitioner) - contained no evidence of improper judicial motivation.

Chief Judge Lynch further explained that unfavorable rulings do not alone raise a viable claim of misconduct. Absent information suggesting illicit judicial motivation, of which there was none, such a claim was not cognizable. Accordingly, the Chief Judge dismissed the misconduct complaint as baseless, 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 for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11(c)(1)(C), and 11(c)(1)(B), respectively.

In the petition for review, petitioner asserts that Chief Judge Lynch "bypassed the factual predicate" of his misconduct complaint. The petitioner states that the Chief Judge's order of dismissal failed to recognize that the district judge's "unfavorable rulings" were "predicated to deter the [j]ury from hearing and acting upon the truth-seeking process that normally accompanies trial proceedings." The petitioner contends that the judge wrongfully denied

petitioner's attorney the opportunity to cross-examine petitioner's girlfriend on her inconsistent grand jury testimony, and wrongfully allowed the prosecution to present other evidence at petitioner's trial that was substantively inconsistent with that used to convict petitioner's co-defendants. Adding that the judge repeatedly referred to the previous trial, the petitioner concludes that the judge knew that the prosecutor "was soliciting perjured testimony and manufacturing evidence" in petitioner's trial.

The petition for review is without merit. As Chief Judge Lynch explained, there is no information in the reviewed record to suggest that the judge was biased against petitioner or was improperly motivated to compel his conviction. The reviewed record, including the unidentified transcript segments submitted with the original complaint, provide no evidence that the judge knowingly admitted perjured testimony, referred to the previous trial, or issued the evidentiary rulings to which petitioner objects, let alone that these rulings were illicitly motivated. Claims of legal error, such as those asserted herein, are addressable on appeal, or, conceivably, by a petition for habeas corpus, but not by means of a judicial misconduct complaint.<sup>1</sup>

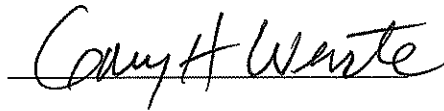
As there is no evidence of judicial bias or improper motivation, the misconduct complaint was appropriately dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). Absent evidence of illicit judicial motivation - of which there is none - insofar as the misconduct complaint was based upon the petitioner's disagreement with the court's evidentiary rulings, it was also properly dismissed as not cognizable, pursuant to

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<sup>1</sup>In the present matter, the petitioner unsuccessfully challenged his conviction and sentence on appeal, although not apparently on the issues raised herein. Petitioner has a 28 U.S.C. § 2255 motion pending in the district court in which it appears that he has raised the issue of conflicting evidence, among others.

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. 01-11-90012 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

A handwritten signature in cursive script that reads "Gary H. Wenté". The signature is written in black ink and is positioned above a horizontal line.

Gary H. Wenté, Secretary