

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90014

BEFORE

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

ORDER

ENTERED: NOVEMBER 17, 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 district judge in the First Circuit. The petitioner alleged that the district judge engaged in misconduct while presiding over the petitioner's criminal prosecution.

The petitioner alleged that the judge intentionally delayed ruling on petitioner's competence to stand trial and on petitioner's motion to suppress the testimony of a government witness. The petitioner further charged that the judge assisted and conspired with this witness in violation of federal law. The petitioner also included apparent allegations pertaining to proceedings in a federal district court outside of the First Circuit.

Chief Judge Lynch dismissed the complaint as baseless. With respect to the allegations of delay, the Chief Judge explained that "an allegation about delay in rendering a decision or ruling" is not cognizable, absent illicit judicial motivation. See Rules for Judicial-Conduct and

Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(B). After reviewing the record - including the misconduct complaint, the docket, and relevant pleadings and court orders - Chief Judge Lynch found no support for the claim that the judge was improperly motivated in connection with the specified rulings, or otherwise.

The Chief Judge observed that, since the petitioner's indictment, the judge obtained numerous psychiatric reports and held multiple competency hearings and status conferences endeavoring to assess the petitioner's competence to stand trial. Chief Judge Lynch noted that, based upon the results of the evaluations, the court had recently entered a lengthy order resolving the issue. The Chief Judge determined that any delay in the issuance of this ruling was not a product of improper judicial motivation and was, therefore, not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B), and Commentary on Rule 3 ("[A] complaint of delay in a single case is excluded as merits-related.").

Chief Judge Lynch reached the same conclusion regarding the allegation of delay in ruling on petitioner's motion to suppress. The Chief Judge observed that the court promptly held an evidentiary hearing on this motion and issued a subsequent order noting its pendency during petitioner's psychiatric evaluations. The Chief Judge determined that, on the present facts, the pendency of this motion was not remotely suggestive of misconduct. See 28 U.S.C. §§ 352(b)(1)(A)(i), and (ii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), and 11(c)(1)(B).

Chief Judge Lynch found no information in the reviewed record in support of the remaining claim that the judge had assisted or conspired with the government's witness. Accordingly, this charge was dismissed as frivolous. See 28 U.S.C. § 352(b)(1)(A)(iii). See also

Rules of Judicial-Conduct, Rules 11(c)(1)(C). Finally, the Chief Judge explained that any claims pertaining to a judge outside of the First Circuit were not cognizable. See Rules for Judicial-Conduct, Rule 7(a)(1).

In the petition for review, petitioner asserts that Chief Judge Lynch misconstrued the petitioner's original allegations. The petitioner states that he had alleged that the district judge had "knowingly received, relieved, comforted or assisted" the witness at issue, not that the judge had "conspired" with the witness. The petitioner secondly claims that the judge's misconduct "prejudiced . . . a Federal district court outside the First Circuit," not that petitioner was charging another judge with impropriety.

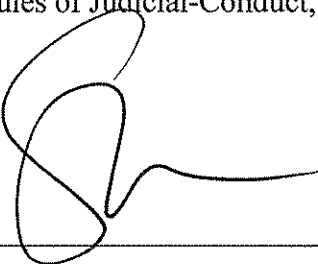
Referring to alleged "facts" in the original misconduct complaint, the petitioner next contends that Chief Judge Lynch failed to recognize that the judge was improperly motivated in delaying ruling on the cited matters. The petitioner asserts that the judge's delay in ruling on the motion to suppress was "obviously convenient to the [p]erjured witness' interest to cause the unavailability of another [p]erson as an [e]yewitness. . . ." The petitioner adds that the judge failed to make the preliminary finding required by federal law that the petitioner was mentally incompetent to stand trial.

The petition for review is without merit. First, the petition for review, like the original complaint, is abstruse and unclear. That said, any distinction between the allegations as intended by the petitioner and as understood by the Chief Judge is neither significant nor determinative. The petition for review, the original misconduct complaint, and the reviewed record provide no evidence that the district judge was improperly motivated - either in delaying ruling on pending matters or otherwise. The alleged "facts" in the original complaint on which petitioner relies in

support of his claim of improper motivation are the assertions that the judge intended to prevent an exculpatory witness from appearing on petitioner's behalf and to prevent fellow prisoners from filing court documents. Such unfounded inferences are not facts.

As Chief Judge Lynch observed, there is no information suggesting that the judge sought to "assist" or in any way aid the government's witness, that any delay in resolving pending matters in the case was a product of illicit judicial motivation, or that the judge interfered with the expeditious administration of the business of the courts (either within or outside of the First Circuit).¹ Accordingly, the complaint was appropriately dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii), and as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C), Rule 11(c)(1)(B), and Commentary on Rule 3, *supra*. As there is no indication of judicial bias or other wrongdoing, any claim of legal error with regard to the competency issue is also directly related to the merits. See 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. 01-11-90014 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 extending to the right.

Susan Goldberg, Acting Secretary

¹Although not necessary to the resolution of the matter, I note that the court has since issued a ruling denying petitioner's pending motion to suppress.