JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NOS. 01-08-90033 and 01-08-90034

BEFORE
Lynch, Chief Circuit Judge

ORDER
ENTERED: DECEMBER 18, 2008

On September 16, 2008, complainant, a pro se litigant, filed a complaint of judicial misconduct under 28 U.S.C. § 351(a) against a district judge and a magistrate judge in the First Circuit. This complaint is the fourth filed by this complainant and alleges the mishandling of one of the complainant's numerous civil cases.[1]

The complainant first filed Complaint No. 363 against the same district judge charged in the present matter, on November 25, 2003, alleging the mishandling of two of the complainant's prior cases. Then Chief Judge Boudin dismissed Complaint No. 363 on January 15, 2004. The complainant then filed Complaint No. 368, on January 20, 2004, against the same district judge. Chief Judge Boudin dismissed Complaint No. 368 on March 8, 2004.

The complainant filed his third complaint, No. 397, on November 23, 2004, against a different district judge and against a magistrate judge, alleging the mishandling of two of the

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[1]While this matter technically consists of two complaints, they are addressed concurrently.

complainant's other cases. Chief Judge Boudin issued an order of dismissal, as well as an order to show cause, on February 3, 2005. The Judicial Council did not issue an order prohibiting complainant from filing further misconduct complaints. It noted, however, that "the complainant should be aware that the filing of further frivolous complaints may well precipitate the issuance of another show cause order." Order, Judicial Council of the First Circuit, Complaint No. 397, April 21, 2005.

The complainant presently alleges judicial misconduct in connection with yet another of his civil cases. The complainant charges that, at a hearing in the case, the magistrate judge "became agrivated [sic]" when a defendant made a false statement. When the complainant alerted the magistrate judge that this statement constituted "criminal defamation" of the complainant, the magistrate judge allegedly stated to the defendant's counsel (also a defendant in the case), that everyone "in this building" had agreed "never to let [the complainant] be successful in a case in this court." The complainant further asserts that the magistrate judge had this statement deleted from the transcript of the hearing.

The complainant next states that the magistrate judge "acquiesced" to perjured testimony by this defendant and that both the magistrate judge and the district judge wrongfully neglected to prosecute the defendant for these alleged crimes. The complainant further alleges that the magistrate judge improperly denied an (unidentified) motion that the complainant filed in the case (asking the court to determine whether this same defendant could lawfully file a claim against the complainant). As a related matter, the complainant asserts that the district judge then "instructed the clerk not to docket" the complainant's interlocutory appeal of this ruling.

Finally, the complainant asserts that the magistrate judge improperly denied the complainant

the "right to depose witnesses" and, along with the district judge, "refused to rule" on a motion for reconsideration that the complainant filed. The complainant concludes that this "refusal" constitutes an "affirmative act " by the district and magistrate judges to conceal the defendant's felony, as well as evidence that the magistrate judge "extruded from the transcript."

The complaint is baseless. A review of the docket, relevant pleadings and court orders demonstrates that the complainant filed this civil proceeding some time ago against multiple defendants. (The complainant has filed 10 civil cases in the district court since 2001 which have precipitated the filing of nine appeals.) The complainant promptly filed an ex parte motion seeking the recusal of the district judge, which was denied. Shortly thereafter, the magistrate judge issued an order denying the complainant's motion for the "issuance of arrest warrants," noting that the complainant's "civil suit is not an appropriate or legal basis for a motion to institute criminal proceedings."

In response to the defendants' motions to dismiss, the district judge issued a lengthy order explaining that the complainant's prior litigation regarding the relevant events precluded him from relitigating the same issues. After affording the complainant the opportunity to show cause why he should not be enjoined from filing further repetitive actions, the district judge issued an order precluding the complainant from filing any further actions pertaining to the claims dismissed in the case and requiring the complainant to obtain leave of court to initiate any other proceeding.

The district judge then referred the remaining matter (counterclaims against the complainant) to the magistrate judge who, after giving the complainant the opportunity to describe the evidence he expected to obtain through depositions of four former defendants in the case, allowed motions to quash the subpoenas. The counter-claimants then filed motions for summary judgment which

the district judge denied. The court held a final pretrial conference for which the complainant failed to appear, thus prompting the defendants to file a motion for entry of judgment on the counterclaims. Noting that the complainant had failed to respond to discovery, file a pretrial statement, or appear at the pretrial conference, the district judge granted the motion for default and denied a further motion for recusal that the complainant had filed.

The magistrate judge then held a hearing on damages, after which he issued a report and recommendation (to which the complainant objects) awarding the counter-claimants damages and legal fees. Over the complainant's objection, the district judge adopted the magistrate judge's recommended decision, and denied the complainant's subsequent motion for reconsideration.

Neither the complaint nor the reviewed record of the case contains any facts corroborating the charges that either the district judge or the magistrate judge harbored any animus against the complainant or engaged in any wrongdoing in connection with the case. There is no evidence at all that the magistrate judge altered the transcript of the damages hearing, or that either the district judge or magistrate judge "acquiesced" to perjured testimony, or instructed the clerk not to docket one of complainant's appeals. Furthermore, the court did not "ignore" the complainant's motion for reconsideration. This motion was denied. Accordingly, the complaint is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rules 11(c)(1)(C).

Insofar as the magistrate judge may have, during the damages hearing, commented on the complainant's repetitive and frivolous litigation, on the present record, such a comment would not constitute judicial impropriety. Nor were the charged judicial officers under any legal or ethical obligation to initiate criminal proceedings against any party. Such charges by complainant are dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules of Judicial Misconduct, Rules

11(c)(1)(A).

Finally, as the record shows no bias or animus by either the district judge or the magistrate judge, the allegations arising from the complainant's disagreement with any of the orders issued by the court--including, but not limited to, the order allowing the motion to quash the deposition subpoenas and the orders denying the motions for recusal--are dismissed as not cognizable. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 11(c)(1)(B).

For the reasons stated, Judicial Misconduct Complaints No. 01-08-90033 and No. 01-08-90034 are found to be frivolous and are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii).

12/18/08
Date

Sandra L. Lynch
Chief Judge Lynch