

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT No. 01-08-90019

BEFORE

Torruella, Boudin, and Howard, Circuit Judges
McAuliffe and Woodcock, District Judges

ORDER

ENTERED: APRIL 9, 2009

Petitioner, a pro se litigant, has filed a petition for review of Chief Judge Lynch's order dismissing his complaint of judicial misconduct, under 28 U.S.C. § 351(a), against a district judge in the First Circuit. The petitioner alleged that the judge engaged in judicial misconduct while presiding over his most recent petition for habeas corpus.¹

The present misconduct complaint is the third filed by the petitioner. Each of the petitioner's first two complaints, No. 425 and No. 455, were filed against the same district judge as accused in the present matter, and against a magistrate judge involved in one of the petitioner's earlier habeas petitions. Then Chief Judge Boudin dismissed these complaints pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and (iii), on April 10, 2006, and June 1, 2007, respectively. The Judicial Council affirmed the orders of dismissal.

¹Court records indicate that the petitioner has filed four civil cases against correctional facilities.

In the pending matter, the petitioner originally charged that the judge violated the local magistrate judge rules by allowing the magistrate judge to resubmit the case to the district judge. The petitioner apparently contended that the district judge lacked authority to review a report and recommendation issued by the magistrate judge. The petitioner asserted that, because neither of the parties had filed an objection to the recommended ruling within 10 days of its issuance, the petitioner was under a court order (issued by the magistrate judge) not to file additional papers. Accordingly, the petitioner inferred that the judge's subsequent "order for a more definite statement is non-existing," and, further, that the judge erred when he dismissed the case for failure to submit this statement. The petitioner concluded that, by taking action in the case before it was "duly returned" by the magistrate judge, the judge acted without jurisdiction and in violation of the Constitution, statutory law, the magistrate judge rules, and cited case law.

The petitioner further contended that the judge's memorandum and order reviewing the magistrate judge's recommended rulings was "unsigned, . . . unauthenticated [and] in contempt 44(a) FRCIV. P. [sic]." Lastly, the petitioner charged that he "was never sent" another order allotting him 14 days to respond to pending motions.

Chief Judge Lynch dismissed the complaint. The Chief Judge's review of the docket, court orders and relevant pleadings indicated that, shortly after its filing, the court referred the habeas petition to a magistrate judge. The magistrate judge ordered that process be served and returned the matter to the district judge, requesting that it be referred back upon the filing of a responsive pleading. Shortly thereafter, the respondent filed a motion for an extension of time to submit an answer and the petitioner filed a motion to be released from custody. The judge allowed the former motion and denied the latter.

Chief Judge Lynch further observed that the respondent, thereafter, filed a motion for more definite statement in which he asserted that the habeas petition failed to sufficiently identify the legal grounds upon which relief was sought. The judge then referred the case back to the magistrate judge. Over the next several months, the petitioner filed a number of motions (to appoint counsel, to be released for an evidentiary hearing, for the respondent to answer, to hold the respondent in contempt, and to expedite a ruling).

Early this year, the magistrate judge issued the report and recommendation cited in the complaint. The magistrate judge noted that, although the petitioner "continues to file a multitude of frivolous and duplicative motions," the habeas petition "sufficiently articulates his grounds for relief." The magistrate judge denied the respondent's motion for a more definite statement, as well as the petitioner's pending motions, and "reclassified" one of the petitioner's motions as his "more definitive statement." Lastly, the magistrate judge prohibited the petitioner from filing any further motions until the respondent filed a responsive pleading.

Several weeks later, the presiding district judge issued a memorandum and order reviewing the magistrate judge's disposition of the pending motions. The court determined that it was "unable to discern [the petitioner's] constitutional basis for challenging his state conviction." The court ordered the petitioner to file within 30 days a "*completed* petition form identifying the issues he believes have been exhausted in his efforts (if any) to seek relief from the . . . state courts." The judge stated that the petitioner's failure to comply with its order for a more definite statement would result in dismissal of the case.

Chief Judge Lynch then observed that the district judge subsequently issued an order dismissing the case with prejudice on the ground that the petitioner had failed to comply with the

court's order for a more definite statement. Thereafter, the Court of Appeals denied the petitioner's request for a writ of mandamus and for an order to compel the district court to enforce the magistrate judge's recommended order.

Chief Judge Lynch determined that the misconduct complaint was without merit. The Chief Judge observed that the petitioner essentially alleged that the judge engaged in misconduct when he declined to follow the magistrate judge's recommendation to deny the respondent's motion for a more definite statement. As there was no evidence in the complaint or in the reviewed record indicating that this decision was motivated by bias or animus, Chief Judge Lynch dismissed this charge as "directly related to the merits of a decision or procedural ruling" pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial Misconduct), Rule 3(h)(3)(A), and Rule 11(c)(1)(B).²

The Chief Judge similarly concluded that the petitioner's disagreement with the court's order of dismissal (based upon the petitioner's alleged reliance on the magistrate judge's recommended decision and/or an alleged failure to have received the judge's order requiring submission of a more definite statement) did not alone present a cognizable basis for a misconduct complaint. Accordingly, this charge was also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii), and Rules of Judicial Misconduct, Rule 11(c)(1)(B).

Chief Judge Lynch determined that the petitioner's remaining allegations--that the judge neglected to personally sign the order reviewing the magistrate judge's findings and that the petitioner did not receive another court order--were equally unfounded. The Chief Judge

²Chief Judge Lynch noted that, although legal error alone is not indicative of judicial wrongdoing, a party's objection is not necessary, under the applicable statutes and rules, for a district judge to modify a magistrate judge's recommended decision. See 28 U.S.C. § 636, Fed.R.Civ.P. 72, and local rules for United States Magistrate Judges.

explained that the judge was under no legal or ethical duty to personally sign the memorandum and order. Nor would a clerical error in the mailing of an order be attributable to the judge. See Boudin, C.C.J., Amended Order, In re: Complaint No. 406, September 9, 2005. Accordingly, these charges were dismissed as not indicative of judicial misconduct. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A). Accordingly, the Chief Judge dismissed the complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i); and (ii).

In the petition for review, the petitioner reiterates his original allegation—namely, that applicable magistrate judge rules give the parties, not the judge, the right to object to a magistrate judge’s report and recommendation. The petitioner restates his argument that the judge lacked authority to review and modify the magistrate judge’s recommended decision.

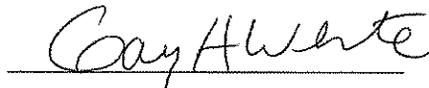
The petitioner further states that, because he did not receive the judge's memorandum and order reviewing the magistrate judge’s report and recommendation until 52 days after it was mailed, he did not have time to submit the requisite response. The petitioner notes additional docket entries identifying other documents that the petitioner states he did not receive. The petitioner requests a hearing in his case to “straighten out the problems.”

The petition for review is baseless. The petition for review contains no information beyond that which was fully addressed by Chief Judge Lynch. As explained by the Chief Judge, the petitioner incorrectly maintains that a presiding district judge may review a magistrate judge's recommended decision only when requested to do so by the parties. That is not the case. Federal law does not limit the presiding judge's review to only those cases in which an objection is filed to the magistrate judge's recommended ruling. See 28 U.S.C. § 636. Moreover, where, as here, there is no evidence of judicial bias or animus, the petitioner's disagreement with the court's

substantive rulings does not alone serve as a cognizable basis for a judicial misconduct complaint. Accordingly, the complaint was properly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial Misconduct, Rule 3(h)(3)(A), and Rule 11(c)(1)(B).

As the Chief Judge also observed, on the present facts, neither an alleged delay in the petitioner's receipt of court orders or the absence of the judge's personal signature on an order demonstrate judicial impropriety. Accordingly, these charges were properly dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial Misconduct, Rule 11(c)(1)(A).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint No. 01-08-90019 is affirmed. See Rules of Judicial Misconduct, Rule 19(b)(1).

A handwritten signature in cursive script, reading "Gary H. Wentte", is written over a horizontal line.

Gary H. Wentte, Secretary