

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINTS NOS. 01-11-90027 and 01-11-90028

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 6, 2011

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Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that two magistrate judges exhibited bias in connection with complainant's civil case. The complainant alleges that the magistrate judge who was first assigned to the case improperly interrupted complainant during a hearing on the defendant's motion to dismiss and asked complainant questions instead of allowing him to present his argument to the court. The complainant adds that the court did not have access to the relevant state court file and that the magistrate judge made a statement at the hearing that is missing from the transcript.

Complainant next alleges that the other magistrate judge, who took over the case, issued a report recommending the allowance of the defendant's motion to dismiss that

reflected judicial bias because it "omitted facts . . . ." The complainant asserts that this magistrate judge neglected to consider the entirety of relevant events that precipitated complainant's legal claims, and failed to obtain evidence under oath from complainant and other witnesses, thereby denying complainant his Constitutional right to a jury trial.

The misconduct complaint is not cognizable. The transcript of the hearing held before the first magistrate judge demonstrates that the court interrupted the complainant's recitation of a prepared statement in order to discern the relevant facts and legal basis for the complainant's claims. The magistrate judge explained the potentially applicable law to complainant and asked complainant to indicate how the defendant violated it. The magistrate judge allowed complainant to answer each of the court's inquiries and to present a closing statement in full and without interruption.

This is not misconduct. Judges are necessarily accorded discretion to question litigants, counsel, and others as needed to obtain information relevant to their determinations and to maintain an appropriate courtroom environment. The magistrate judge's conduct at the hearing did not remotely approach the limits of the court's discretion in this regard, let alone impinge upon the "bounds of propriety" potentially suggestive of judicial wrongdoing or misconduct. See e.g., Lynch, C.C.J., Order, In Re: Complaint No. 01-11-90001, March 10, 2011, at 6-7, and cases cited. Accordingly, the allegation that the magistrate judge's conduct at the hearing constituted misconduct is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(A).

The allegation of bias against the other magistrate judge relies only on the complainant's disagreement with the court's recommended decision. The recommended decision, like the rest of the reviewed record - including the misconduct complaint, the docket, relevant pleadings and the court's orders - provides no indication of bias or improper motive.

Cognizable misconduct "does not include . . . an allegation . . . that calls into question the correctness of a judge's ruling . . . without more . . . ." Rules of Judicial-Conduct, Rule 3(h)(3)(A). In a lengthy report and recommendation, the magistrate judge who took over the case analyzed the viability of each of complainant's claims before concluding that the defendant's motion to dismiss should be allowed. A legal or factual error or omission by a court - of which there is no evidence in the present matter - is not misconduct.

Accordingly, the allegation of bias against the second magistrate judge is dismissed as baseless, 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 for Judicial-Conduct, Rules 11(c)(1)(C) and 11(c)(1)(B), respectively.

The complainant's remaining claims - that the court did not have access to complainant's state court file and that the hearing transcript was inaccurate - allege clerical errors. Such claims are not cognizable under the judicial misconduct statute, and are unsupported by the reviewed record. See 28 U.S.C. §§ 352(b)(1)(A)(i), and 352(b)(1)(A)(iii), respectively. See also Rules for Judicial-Conduct, Rules 11(c)(1)(A),

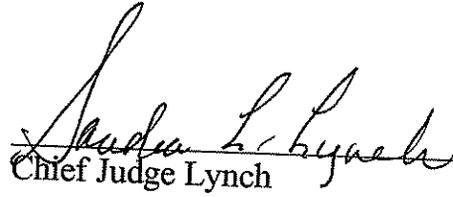
and 11(c)(1)(C).

For the reasons stated, Complaints Nos. 01-11-90027 and 01-11-90028 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B), and 11(c)(1)(C).

Date

10/16/11

Chief Judge Lynch

A handwritten signature in cursive script, appearing to read "Sandra L. Lynch", written over a horizontal line.