

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-11-90034

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 1, 2011

Complainant, a pro se litigant, has filed a complaint, under 28 U.S.C. § 351(a), alleging that a magistrate judge engaged in misconduct while presiding over the complainant's civil case. This is complainant's second misconduct complaint.

Complainant filed a previous misconduct complaint against two district judges alleging impropriety in connection with another of complainant's civil cases. Then Chief Judge Boudin dismissed that complaint pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and (iii). See Boudin, C.C.J., Order, In Re: Complaint No. 436, September 27, 2006. The Judicial Council affirmed the order of dismissal. See Judicial Council of the First Circuit, Order, In Re: Complaint No. 436, February 8, 2007.

The complainant alleges that the magistrate judge "committed falsity" by issuing

rulings contrary to complainant's interests. Complainant reiterates apparent legal arguments from his case and adds that the district judge, who presided over the proceeding with the magistrate judge, had allowed complainant to reopen the case. Finally, complainant includes allegations that defense counsel committed perjury during a hearing and that clerk's office staff had engaged in a conspiracy in connection with another of complainant's cases.

The complaint is baseless. As an initial matter, the judicial misconduct complaint procedure does not provide a mechanism for addressing actions by attorneys or court staff. See 28 U.S.C. § 351, *et. seq.* See also Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 4. That said, nonetheless complainant provides no basis from which to even infer that clerk's office staff have conspired against complainant or engaged in other impropriety in connection with any of the complainant's cases.

The reviewed record - including the misconduct complaint, the docket, and relevant pleadings and court orders from the case at issue - contains no suggestion of illicit animus or other wrongdoing by the magistrate judge. The complainant alleges only that the magistrate judge made errors of fact and law in recommending the dismissal of complainant's case. Even if true, this is not misconduct. "Cognizable misconduct . . . does not include . . . [a]n allegation that calls into question the correctness of a judge's ruling" Rules of Judicial-Conduct, Rule 3(h)(3)(A).

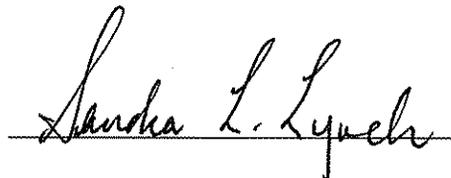
In the lengthy report and recommendation to which complainant objects, the magistrate judge thoroughly addressed each of complainant's claims before recommending the allowance of defendants' motions to dismiss. As there is no evidence that the magistrate judge engaged in bias or other wrongdoing, the misconduct complaint is dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(C). Because the complainant's disagreement with the substance of the magistrate judge's recommended ruling does not constitute a cognizable basis for a misconduct complaint, the complaint is also dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules for Judicial-Conduct, Rule 11(c)(1)(B).

Finally, the fact that the presiding district judge allowed complainant to amend his complaint and reinstate the case shortly after the case was filed is irrelevant to the present matter. See 28 U.S.C. § 352(b)(1)(A)(i). See also Rules for Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-11-90034 is 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).

November 1, 2011

Date

A handwritten signature in black ink that reads "Sandra L. Lynch". The signature is written in a cursive style and is positioned above a horizontal line.

Chief Judge Lynch