

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINTS NO. 01-11-90036 AND 01-11-90037

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: NOVEMBER 29, 2011

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

The complainant alleges that the magistrate judge and the district judge exhibited bias in favor of the defendant by dismissing complainant's case for failure to execute service of process. Complainant states that she provided the court and the United States Marshals Service (U.S.M.S.) with the defendant's correct address and that the defendant was employed at this address on the day when the U.S.M.S. allegedly attempted service on complainant's behalf. Noting that she successfully sent a copy of the civil complaint by certified mail to the defendant at this address, complainant speculates that the

U.S.M.S. did not really go to the address provided. The complainant concludes that the court improperly dismissed the case, and asks the magistrate judge and the district judge to enter a default judgment against the defendant for failure to file an answer or responsive pleading.

As an initial matter, the judicial misconduct procedure does not provide an avenue for modifying an order or for obtaining relief in a pending or closed case. See 28 U.S.C. § 354(a)(2), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 20(b). Moreover, the reviewed record - including the misconduct complaint, the docket and relevant pleadings and court orders from complainant's case - provides no information suggestive of bias or any other wrongdoing by either the magistrate judge or the presiding district judge. The record demonstrates that, for over three years, the magistrate judge gave complainant multiple opportunities to provide the U.S.M.S. with a valid address for the defendant or to otherwise perfect service. An error concerning the defendant's address or the execution of service by either the court or the U.S.M.S. - of which there is no evidence - would not alone be indicative of judicial misconduct. In the absence of an adequate address, the magistrate judge ultimately recommended dismissal of the case without prejudice. The district judge, to whom the case had recently been reassigned, approved the magistrate judge's recommended decision, over complainant's objection.

As there are no facts indicative of bias, improper motive, or other impropriety, the misconduct complaint against the magistrate judge is dismissed as frivolous, pursuant to

See 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C).¹ Absent facts suggesting bias or animus - of which there are none - complainant's disagreement with the magistrate judge's recommended ruling dismissing complainant's case does not constitute a cognizable misconduct complaint. See 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). Finally, insofar as complainant disputes the district judge's order adopting the report and recommendation - the only action that the judge took in the case - the complaint is not cognizable. See id.

For the reasons stated, Complaints Nos. 01-11-90036 and 01-11-90037 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii), and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(C).

11/29/11

Date

Stephen L. Lynch

Chief Judge Lynch

¹Any claim that the U.S.M.S. intentionally misrepresented its attempt to serve the defendant is both not cognizable under the judicial misconduct statute and unfounded.