

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-12-90014

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: JUNE 13, 2012

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a magistrate judge engaged in misconduct while presiding over complainant's civil case. The misconduct complaint consists exclusively of the objections that complainant filed in the case to two of the magistrate judge's recommended decisions. These are objections to the magistrate judge's recommendation that a motion to dismiss filed by some of the many defendants in the case be allowed and the recommendation that the complainant's motion for leave to file a fourth amended complaint be denied. These objections were presented to the district court, and rejected.

Complainant contends that the magistrate judge delayed several months before denying his motion to file the amended complaint and this was improper. The

complainant maintains that, as a result of this delay and the erroneous decision denying the motion, the magistrate judge issued numerous, unnecessary orders during the intervening months based on the existing, deficient complaint, including the allowance of the defendants' motion to dismiss. Complainant asserts that the fourth amended complaint would have cured all deficiencies had it been the operative pleading.

Complainant adds that the magistrate judge also failed to enforce a local rule requiring the defendants to certify that they had conferred with complainant in an attempt to narrow disputed issues before filing a motion. Complainant does not identify any specific pleadings allegedly subject to this deficiency.

Finally, complainant alleges that the magistrate judge engaged in improper ex parte communication with defense counsel. Complainant suspects the improper communication from the alleged fact that the court ruled on motions before the motions themselves had been filed with the court. Without identifying the pleadings or orders, complainant states that certain motions were docketed after the court's rulings on them. Complainant concludes that the magistrate judge's recommended rulings, therefore, relied on documents not included in the record, and reflect "strong bias and favoritism." Complainant requests the magistrate judge's recusal.

The misconduct complaint is baseless. As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for obtaining a judge's recusal from a proceeding. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and

19.

The reviewed record of the case - including the misconduct complaint, the docket, and the relevant pleadings and court orders - offers no evidence of improper ex parte communication, bias or other wrongdoing by the magistrate judge. First, there is no indication in the docket or elsewhere that the magistrate judge ruled on motions before they were filed with the court or communicated improperly with counsel in this or any other capacity. Furthermore, a docketing delay or mistake - which complainant has not demonstrated - might suggest clerk's error but it would not alone be indicative of judicial wrongdoing. See Boudin, C.C.J., Amended Order, In Re: Complaint No. 406, September 9, 2005.

The claims of bias are equally deficient. In the first of the two orders at issue, the magistrate judge recommended the dismissal of the proceeding on the ground that the voluminous civil complaint filed against over 100 defendants failed to meet even the minimal requirements of intelligibility and length applicable to pro se litigants under Fed.R.Civ.P. 8(a)(2). In the other ruling, the magistrate judge determined, based upon the complainant's description, that the fourth amended complaint would not cure the many deficiencies identified in the complaint that the court had dismissed. Accordingly, the magistrate judge recommended the denial of the complainant's motion for leave to file it. The presiding district judge adopted both recommended decisions over complainant's objections.

These orders, like the remainder of the reviewed record, contain no information

suggesting that the magistrate judge was biased against complainant or harbored any other illicit motive. Accordingly, the claims of improper ex parte communication and bias are dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rules 11(c)(1)(C).

Where, as here, there is no information indicating that the magistrate judge was improperly motivated, the complainant's disagreement with the substance of the court's orders and the claim of delay in ruling on the complainant's motion to file the amended complaint are not cognizable under the judicial misconduct statute. See Rules of Judicial-Conduct, Rules 3(h)(3)(A), and 3(h)(3)(B), respectively. Accordingly, these claims are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii).

For the reasons stated, Complaint No. 01-12-90014 is 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).

June 13, 2012

Date



Chief Judge Lynch