

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-12-90018

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: OCTOBER 1, 2012

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Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that a magistrate judge exhibited bias against complainant in reviewing several motions filed in complainant's civil rights case after summary judgment was entered for the defendant and affirmed on appeal. These motions included the defendants' motions for attorneys' fees and costs and the denial of complainant's motion for relief from judgment and for the recusal of the magistrate judge.

The record indicates that the parties filed these motions after the Court of Appeals had affirmed the magistrate judge's lengthy decision dismissing complainant's underlying

case.<sup>1</sup> Complainant alleges that, in preparing to respond to the defendants' motions for fees and costs, complainant discerned a "pattern of conduct" that suggested that the defendants had engaged in "fraud upon the court." Complainant asserts that this discovery prompted complainant to file the motion for post judgment relief and simultaneously a request for the magistrate judge to recuse.

Complainant adds that, during the pendency of the case, defense counsel directed "disparaging personal remarks" toward complainant. Complainant contends that defense counsel thus committed "fraud upon the court" and made pejorative remarks. The magistrate judge, it is contended, violated several canons of ethics, and demonstrated personal bias and partiality in reviewing the referenced motions.<sup>2</sup> One claim is that the magistrate judge should have taken action against the disparaging comments and the failure to do so indicates bias. Complainant concludes that the magistrate judge's wrongful denial of complainant's motion for relief and for the magistrate judge's recusal evidences the magistrate judge's "complicity" in the defendants' "scheme of misconduct."

The misconduct complaint is not supported by any evidence and is not cognizable. The reviewed materials - including the misconduct complaint, the docket,

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<sup>1</sup>The parties had consented to have the magistrate judge conduct all of the proceedings in the case. See 28 U.S.C. § 636(c).

<sup>2</sup>Complainant references Canon 3A(3) of the Code of Conduct for United States Judges ("A judge should be patient, dignified, respectful and courteous to litigants . . . [and] should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process") and Canon 3C(1) ("A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .").

and the relevant pleadings and court orders - provide no evidence that the magistrate judge was biased against the complainant. The record indicates that the magistrate judge denied complainant's motion for relief on the ground that it was based on complainant's disagreement with the court's legal analysis and decision in the underlying case. The magistrate judge allowed the defendants' motion for attorney's fees on the ground that the complainant failed to articulate the civil rights that the defendants had allegedly violated.

There is no information in any of the referenced rulings or in the misconduct complaint that suggests that the magistrate judge was improperly motivated, biased, or engaged in any other wrongdoing either in connection with the cited motions or otherwise. "An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, *without more*, is merits-related (emphasis added)." Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 3(h)(3)(A). Complainant's claims fall squarely within this rule.

As complainant's allegation of bias is offered without any basis in fact, it is dismissed as frivolous, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C). The complainant's claims disputing the substance of the magistrate judge's orders are not cognizable under the judicial misconduct statute. See Rules of Judicial-Conduct, Rule 3(h)(3)(A). Accordingly, these claims are dismissed, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B). For the same reasons, the denial of the motion to recuse does not evidence a lack of impartiality, nor does it evidence any misconduct by the judge.

Finally, on the present facts, the magistrate judge's disregard for the critical remarks that the defendants purportedly directed at complainant does not constitute a violation of the Code of Conduct, let alone judicial misconduct.<sup>3</sup> See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-12-90018 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).

10/1/12  
Date

Sandra L. Lynch  
Chief Judge Lynch

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<sup>3</sup>While the canons may provide guidance for consideration in judicial misconduct proceedings, not every violation of the Code of Conduct constitutes misconduct under the statute, 28 U.S.C. §§ 351, et. seq. See Code of Conduct for United States Judges, Commentary on Canon 1.