

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NO. 01-13-90003

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BEFORE  
Lynch, Chief Circuit Judge

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ORDER

ENTERED: APRIL 24, 2013

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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 complainant alleges that the magistrate judge wrongfully issued dispositive rulings in the case without complainant's consent.

This is complainant's second misconduct complaint against the same magistrate judge. In 2002, complainant filed a misconduct complaint alleging, in part, that the magistrate judge lacked authority to preside over another of complainant's civil actions.<sup>1</sup> Then Chief Judge Boudin dismissed the misconduct complaint, pursuant to 28 U.S.C. §§

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<sup>1</sup>Court records indicate that complainant has filed a total of 13 civil cases in the district court.

372(c)(3)(A)(i), (ii) and (iii) (the predecessor to 28 U.S.C. § 352(b)(1)(A)(i), (ii) and (iii)). See Order, Boudin, C.C.J., In Re Complaint No. 327, July 25, 2002. The Judicial Council affirmed the Chief Judge's order of dismissal. See Order, Judicial Council of the First Circuit, In Re Complaint No. 327, December 5, 2002.

Complainant alleges that the magistrate judge wrongfully continued to preside over complainant's case after complainant had filed a "form of refusal disqualifying" the magistrate judge from the matter. Complainant contends that, by continuing to rule on dispositive matters, including the defendant's motion to dismiss, the magistrate judge violated Fed. R. Civ. P. 72. Complainant asks the Judicial Council to "extricate" the magistrate judge from the case.

As an initial matter, the judicial misconduct complaint procedure, 28 U.S.C. § 351, *et. seq.*, does not provide a mechanism for entering or modifying an order in a pending or closed case. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11 and 19.

Moreover, the misconduct complaint is baseless. The reviewed record - including the misconduct complaint, the docket, and relevant pleadings and orders from complainant's case - contains no evidence whatsoever of wrongdoing by the magistrate judge. The record indicates that, after the complainant submitted the form declining consent to the magistrate judge's jurisdiction, a district judge was assigned to the case. In accordance with the governing statute and rule, the district judge referred a number of

motions, including the defendant's motion to dismiss, to the magistrate judge for a report and recommendation. See 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. The magistrate judge issued a lengthy report recommending allowance of the defendant's motion to dismiss. After reviewing the matter *de novo*, the district judge agreed with the magistrate judge's recommended ruling, allowed the motion to dismiss and closed the case.

There is no evidence that the magistrate judge exceeded his authority or engaged in any other wrongdoing in connection with the complainant's case. The parties' consent is not required for the presiding district judge to refer dispositive matters to a magistrate judge for a recommended ruling, as was done in this case. See 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72. Accordingly, the misconduct complaint is dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(C).

The misconduct complaint is also not cognizable. Where, as here, there is no evidence of improper judicial motive, the complainant's disagreement with orders issued in the case - including the magistrate judge's exercise of authority or the substance of the magistrate judge's rulings - does not alone suggest misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) (Cognizable misconduct "does not include an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits related."). Accordingly, the misconduct complaint is 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 reasons stated, Complaint No. 01-13-90003 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).

4/24/13

Date

Stanley Lynch

Chief Judge Lynch